

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 14 June 2011

Public Authority: Oldham Council
Address: Civic Centre
West Street
Oldham
OL1 1UT

Summary

The complainant submitted a request to Oldham Council ('the Council') for information about the results of staff suspensions. The Council withheld this information under the exemptions at sections 40 and 41 of the Act. During the investigation, the Council disclosed some information to the complainant. The Commissioner finds that the Council has breached section 10(1) by failing to disclose this information within the statutory time for compliance. However, the Commissioner finds that the Council was correct to withhold the information under section 40(2). Consequently, he does not require the Council to take any further action.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 13 September 2010, the complainant wrote to the Council to request the following information:

"Our Lady's RC High School

I refer to the members of staff who were suspended from work at the above school and ask that you supply the following information for each member of staff. Please note that it is not necessary to identify these persons; please refer to them as person A, B etc.

- 1) "Please state whether each person has been dismissed or reinstated
 - 2) The date of dismissal or re-instatement
 - 3) In the case of dismissal please explain in full the reasons for dismissal."
3. On 28 September 2010 the Council responded to the complainant. The response confirmed that it held information in relation to employee dismissal and reinstatements. However, the requested information was withheld under sections 40 and 41 of the Act.
 4. On 14 October 2010, the complainant wrote to the Council and asked that it conduct an internal review of this response. The complainant noted that press reported indicated that members of staff had been made redundant as well as suspended, and submitted a supplementary request for "exactly how many persons have left the school during the summer term 2010".
 5. On 6 December 2010, the Council provided its internal review outcome to the complainant. This upheld the previous response and clarified that the Council relied on subsection 40(2) to withhold the requested information. The Council confirmed that it also withheld the information requested in the complainant's supplementary request of 14 October under the same exemptions.

The Investigation

Scope of the case

6. On 16 December 2010 the complainant contacted the Commissioner to complain about the Council's decision to withhold the requested information.
7. During the course of the investigation the Council disclosed the information relevant to the complainant's request of 14 October for the total number of staff who had left the school during the summer term of 2010.

Chronology

8. On 17 February 2011, the Commissioner wrote to the Council to explain that he had received a complainant about the way it had dealt with this request. The Commissioner asked the Council to provide the withheld information.
9. On 8 March 2011, the Council responded to the Commissioner. It provided the withheld information, and explained why it felt that this was exempt from disclosure.

Analysis

Substantive Procedural Matters

Section 10

10. As detailed above, during the course of the investigation the Council decided to disclose the total number of staff who left the school during the summer term of 2010. The Council explained to the Commissioner that it had assumed that the complainant wanted to receive the full details of the circumstances of each departure – for example, if the individual resigned, retired, was dismissed, or made redundant. It consequently withheld the information under sections 40 and 41 of the Act.
11. However, the Commissioner's opinion is that it is clear that the request was solely for the total number of individuals that left the school. After discussion with the Commissioner, the Council disclosed this information to the complainant on 11 May 2011.
12. Section 10(1) provides that a public authority should comply with section 1(1) of the Act "promptly, and in any event not later than the twentieth working day following the date of receipt. The complainant's request for the total number of staff that left during the summer term of 2010 was made on 14 October 2010. The Council did not disclose this information until 11 May 2011. Consequently the Commissioner finds that it has breached section 10(1).

Section 40

13. Section 40(2) provides an exemption for information which is the personal data of any third party and where either of the conditions set

out in section 40(3) is met. (The relevant sections of section 40 are included in the legal annex).

14. In order to rely on the exemption provided by section 40, the information being requested must therefore constitute personal data as defined by the DPA.
15. The complainant wishes to know whether suspended members of staff were dismissed or reinstated, the date that this was done, and the reasons for any dismissals. All of this information is considered to be personal data because it 'relates to' identifiable living individuals and provides details about their employment.
16. The Commissioner notes that the complainant informed the Council that she was happy to receive anonymised information where members of staff were identified only as A, B etc. However, having reviewed the withheld information the Commissioner is satisfied that it falls within the description of personal data as defined by the DPA. The Commissioner notes that the number of individuals who were suspended is very small. He considers that within a discrete environment such as a school, the individuals concerned could easily be identified from the requested information, especially given that their suspensions resulted in different outcomes and were concluded on different dates.
17. Having established that the withheld information is personal data, the Commissioner is satisfied that section 40 of the Act is engaged. It is therefore necessary to decide whether the information is exempt from disclosure under any of the conditions described in section 40(3). The first condition applicable is that described at section 40(3)(a)(i), that disclosure will breach any of the data protection principles.

The first data protection principle

18. The Council has argued that the withheld information is exempt under section 40(2) because disclosure would breach the first data protection principle.
19. The first data protection principle has two components:
 1. Personal data shall be processed fairly and lawfully and
 2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

Fairness

20. In considering whether disclosure of the information requested would comply with the first data protection principle, the Commissioner has first considered whether disclosure would be fair. In assessing fairness, the Commissioner has considered the reasonable expectations of the individuals concerned, the nature of those expectations and the consequences of disclosure to the individual. He has then balanced against these the general principles of accountability, transparency as well as any legitimate interests which arise from the specific circumstances of the case.

Expectations of the individuals concerned

21. A data subject's expectations are likely in part to be shaped by generally accepted principles of everyday interaction and social norms, for example, privacy. It is accepted that every individual has the right to some degree of privacy. However, expectations are also shaped by a commitment to transparency in the way public authorities conduct their activities, and the Act's presumption in favour of disclosure. This was recognised by the Tribunal in [*The Corporate Officer of the House of Commons v Information Commissioner and Norman Baker MP*](#) (EA/2006/0015 & 0016), which commented that:

“The existence of FOIA in itself modifies the expectations that individuals can reasonably maintain in relation to the disclosure of information by public authorities, especially where the information relates to the performance of public duties or the expenditure of public money. This is a factor that can properly be taken into account in assessing the fairness of disclosure.” (para 43)

22. The Commissioner considers that although there are no absolute rules, where information relates to an individual's private life (i.e. their home, family, social life or finances), it will deserve more protection than information about them acting in an official or work capacity (i.e. their public life). The Commissioner believes that employees of public authorities should be open to scrutiny and accountability and should expect to have some personal data about them released because their jobs are funded by the public purse. However, as set out in his [guidance](#) on section 40, the Commissioner also considers that information which might be deemed 'HR information' (for example details of pension contributions, tax codes, etc) should remain private, even though such information relates to an employee's professional life, and not their personal life.

23. In this case the Commissioner has considered whether information relating to the outcomes of suspensions might be deemed HR information. The Commissioner believes that the information relevant to this case could be argued to fall into the category of HR information, because it relates to disciplinary actions and is a personnel matter, and his general view is that this type of information should remain private. The Commissioner is satisfied that the suspended individuals would have had a reasonable expectation that the details of the outcomes of their suspensions would be kept confidential and not passed on to third parties without their consent.

Consequences of disclosure

24. In light of the nature of the information and the reasonable expectations of the individuals concerned, as noted above, the Commissioner is satisfied that release of the withheld information about the outcome of suspensions would not only be an intrusion of privacy but could potentially cause unnecessary and unjustified distress to the individuals in this case and the withheld information itself in coming to this conclusion.

General principles of accountability and transparency

25. Notwithstanding a data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if there is a more compelling public interest in disclosure.
26. The Commissioner notes that in the complainant's opinion, disclosure of the requested information would be in the public interest, because it would demonstrate how the school managed the suspension of members of staff. The complainant argues that

"the purpose of the data protection act is not to cover up poor performance in the workplace...the parents of the children attending the school have a right to know of any failure involved in the education of their children"

The Commissioner is also aware that the suspension of some members of staff generated coverage in the local press and interest from the local community.

27. However, the Commissioner believes that the public's interests must be weighed against the prejudices to the rights, freedoms and legitimate interests of the members of staff concerned. The Commissioner accepts the Council's contention that these members of staff would

have a strong expectation of privacy and confidentiality over the details of disciplinary matters and information relating to their suspensions. The Commissioner also notes that there is no suggestion that the school, council or the suspended individuals have placed any information about the outcomes of the suspensions into the public domain.

28. The Commissioner's conclusion is that disclosure of the requested information would enable private information to be deduced about individuals by others who possessed 'corroborating information'. The Commissioner finds that the suspended individuals would have a reasonable expectation that the information related to disciplinary proceedings would remain confidential, and he therefore concludes that the disclosure of the requested information would be unfair and a breach of the first data protection principle. It has therefore not been necessary to go on to consider any of the conditions in Schedule 2 of the Data Protection Act 1998.
29. The Commissioner therefore upholds the Council's application of the exemption provided at section 40(2) of the Act.

Section 41

30. As the Commissioner has determined that the Council was correct to withhold the information under the exemption at section 40 of the Act, he has not gone on to consider the application of section 41.

The Decision

31. The Commissioner's decision is that the Council has breached section 10(1) by failing to provide the total number of staff that left the school during the summer of 2010 within the statutory time for compliance of 20 working days. However, the Council was correct to withhold the remainder of the requested information under section 40(2) of the Act.

Steps Required

32. The Commissioner does not require the Council to take any further action.

Right of Appeal

33. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

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

Dated the 14th day of June 2011

Signed

**Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 1(1) provides that -

"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."

Section 10(1) provides 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."

Section 40(2) provides 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."

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, or
 - (i) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded."

Section 40(4) provides that –

"The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data)."

Section 40(5) provides that –

"The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either-
- (i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of the Act were disregarded, or
- (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed)."

Section 1(1) of the Data Protection Act defines personal information 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 intention of the data controller or any other person in respect of the individual.'