

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 July 2014

Public Authority: Central Bedfordshire Council

Address: Priory House
Monks Walk
Chicksands
Shefford
Bedfordshire
SG17 5TQ

Decision (including any steps ordered)

1. The complainant has requested information held by Central Bedfordshire Council. The information sought concerns complaints made by the applicant about the Council.
2. The Commissioner's decision is that the Council is entitled to rely on section 40(5) of the Act to neither confirm nor deny whether it holds the information sought by the complainant.
3. The Commissioner does not require the Council to take any further action in respect of this matter.

Request and response

4. On 14 February 2014, the complainant wrote to Central Bedfordshire Council ("the Council") and requested information in the following terms:

"In September 2013 I made a request to the Customer Relations and Information Officer to investigate the conduct and actions of various officers and departments within Central Bedfordshire Council. I and [a named Councillor] attended a meeting with officers of the Customer Relations Team. I submitted information to the team, and an Inquiry was held. I subsequently received a communication advising me that no misconduct had occurred. However I have never seen any report relating to that Inquiry, therefore I request access to [That] report.

Because the officers of the Council will not meet with me to discuss the present situation, I have no knowledge of the case they intend to present to the Court in respect of the Order they have issued regarding Section 116 of the Highways Act. They have also issued an order under Section 118 of the Highways Act, and I have not been informed of any evidence or information they intend to put forward with respect to that case. I therefore request access to the proposed documents and information they intend to issue."

5. On 3 March 2014 the Council responded to the complainant's request. The Council stated:

"In response to the first question, the Council can confirm that the meeting you refer to was to establish your complaints. The notes of the meeting and the outcome of the complaint investigation were sent to you. There was no other report written relating to the complaints. Consequently, there is nothing further that we can disclose to you."

As regards to the second part of your request, the Council will be contacting you to arrange meetings to discuss both the Section 118 Public Inquiry and the Section 116 Magistrates Court hearing at which any evidence the Council intends to put forward in respect of the case will be shared with you in accordance with Civil Procedure Rules. The information is therefore exempt from disclosure by virtue of Section 42 – Legal Professional Privilege, as its disclosure at the moment would breach legal privilege."

6. The complainant did not ask the Council to undertake an internal review of its position regarding his request. This is because the Council stated:

"We do not offer an internal review of this decision but you may refer this to the Information Commissioner for a decision."

7. The complainant has clarified for the Commissioner what he believes should be held by the Council in respect of its investigation of his complaints. He asserts that there must have been a report in order for the decision maker to arrive at his/her decision. He considers that his request should have been objectively read to include the recorded information which was presented to the person making the decision.

Scope of the case

8. The complainant contacted the Commissioner on 10 March 2014 to complain about the way his request for information had been handled.

9. On 16 June the Commissioner spoke with the complainant about his complaint. The Commissioner explained the principles which underpin the concept of Legal Professional Privilege in relation to the disclosure of information into the public domain under the FOIA.
10. As a result of this conversation the complainant withdrew his complaint in respect of the second part of his request.
11. The Commissioner's investigation of the complainant's complaint solely concerns the 'report' which he believes the Council must hold in respect of its investigation of his complaints, as identified at the meeting attended by [a named Councillor].

Reasons for decision

Section 40 – Personal data

12. The Commissioner has considered the nature of the information sought by the complainant.
13. It is the Commissioner's opinion that any information held by the Council in respect of his complaints would constitute the complainant's personal data.
14. The Commissioner holds this view on the basis that, in order to determine whether it holds information within the scope of the complainant's request, the Council's starting point would be to search for relevant information with reference to the complainant's name, as he would be the focus of the information sought.
15. Information which constitutes the personal data of the applicant is exempt from disclosure under the FOIA by virtue of section 40(1). This states –

"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."
16. The Commissioner has considered the Council's response to the complainant's request.
17. In the Commissioner's opinion the Council should not have confirmed to the complainant whether it holds or does not hold any information in connection to the complaints he has made.

18. The Commissioner considers that most people who make complaints to public authorities do so with the expectation that their complaint would be treated with some degree of confidentiality.
19. The Commissioner considers that the Council should have responded to the complainant's request by issuing a refusal notice under section 40(5) of the FOIA, stating that the Council neither confirms nor denies whether it holds the information he seeks. Section 40(5) states:

"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 that 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)."
20. In circumstances where an applicant makes a request for his personal data, the public authority receiving that request, acting as a data controller, should invite the applicant to make a subject access request under section 7(1) of the Data Protection Act 1998 ("the DPA").
21. In the Commissioner's experience, where a public authority holds information concerning a complaint it has received, and where it has investigated that complaint, the information held is likely to contain the personal data of third parties as well as the personal data of the person who made the complaint.
22. In considering a section 7 subject access request, the data controller is obliged to provide the applicant with all the personal information he is entitled to receive.
23. The Commissioner notes that the right of subject access is subject to the potential application of exemptions to disclosure which are provided by the DPA. In the Commissioner's experience the nature of complaint files will most likely require the data controller to consider sections 7(4), 7(5) and 7(6) of the DPA, which state:

“(4) Where a data controller cannot comply with the request without disclosing information relating to another individual who can be identified from that information, he is not obliged to comply with the request unless—

(a) the other individual has consented to the disclosure of the information to the person making the request, or

(b) it is reasonable in all the circumstances to comply with the request without the consent of the other individual.

(5) In subsection (4) the reference to information relating to another individual includes a reference to information identifying that individual as the source of the information sought by the request; and that subsection is not to be construed as excusing a data controller from communicating so much of the information sought by the request as can be communicated without disclosing the identity of the other individual concerned, whether by the omission of names or other identifying particulars or otherwise.

(6) In determining for the purposes of subsection (4)(b) whether it is reasonable in all the circumstances to comply with the request without the consent of the other individual concerned, regard shall be had, in particular, to—

(a) any duty of confidentiality owed to the other individual,

(b) any steps taken by the data controller with a view to seeking the consent of the other individual,

(c) whether the other individual is capable of giving consent, and

(d) any express refusal of consent by the other individual.”

24. The Commissioner’s decision is that the Council should have issued a refusal notice under section 40(5) of the FOIA and should have invited the applicant to make a subject access request under the DPA.

Right of appeal

25. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

26. 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.
27. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF