

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 June 2015

Public Authority: Prestatyn Town Council
Address: 7 Ffordd Llys Nant
Prestatyn
LL19 9LR

Decision (including any steps ordered)

1. The complainant requested a copy of correspondence sent by a third party to Prestatyn Town Council ('the Council'). The Council withheld the information requested under sections 40(1) and 40(2) of the FOIA. The Commissioner's decision is that the Council has correctly applied section 40(1) to the request. The Commissioner does not require any steps to be taken. However, further commentary on the implication of the Commissioner's finding in relation to the Council's obligations under the Data Protection Act 1998 is set out in the 'Other Matters' section at the end of the Notice.

Request and response

2. On 19 December 2014, the complainant wrote to the Council and requested a copy of correspondence sent by a named third party to the Council.
3. The Council responded on 6 January 2015 and stated that it did not hold an FOIA request from the named individual, but it held correspondence dated 17 October 2014, and a copy of the Council's response. The Council stated that it considered the information exempt under section 40 of the FOIA.
4. On 11 January 2015 the complainant requested an internal review of the Council's refusal to provide the information requested.

5. The Council provided the outcome of its internal review on 2 February 2015 and upheld its decision that the information requested was exempt under "section 40 (1/2)" of the FOIA.

Scope of the case

6. The complainant contacted the Commissioner on 22 February 2015 to complain about the way his request for information had been handled.
7. During the course of the Commissioner's investigation, the Council confirmed that it was relying on section 40(1) in relation to the complainant's own personal data and section 40(2) in relation to third party personal data.
8. The scope of the Commissioner's investigation into this complaint is to determine whether the Council should disclose the information requested on 19 December 2014.

Reasons for decision

Section 40 – the exemption for personal data - the complainant's own personal data

9. In its internal review response, although the Council did not clearly state that some of the information requested constituted the complainant's own personal data, it stated it was relying on "section 40 (1/2)". During the Commissioner's investigation the Council confirmed that it was relying on sections 40(1) and 40(2) as the basis to refuse the request, as the withheld information constituted the personal data of the complainant and other third parties.
10. Where requested information constitutes the personal data of more than one individual, then all individuals are data subjects for the purposes of section 40 of the FOIA. In situations where a request is made by one of the data subjects the Commissioner's approach is to consider the information under the section 40(1) exemption.
11. There is no right of access to personal data about oneself under the FOIA, as section 40(1) provides that information is exempt if it constitutes the personal data of which the applicant is the data subject. Personal data is defined in section 1 of the Data Protection Act 1998 ('the DPA') as data which relates to a living individual who can be identified:
 - from that data,

- or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
12. Having viewed the withheld information, which consists of an email from a named individual to the Council dated 17 October 2014, it is clear to the Commissioner that it contains information relating to the complainant, including references to his name. The complainant is clearly identifiable from the references within the withheld information to him and the information relates to him. The Commissioner is satisfied that the information is the complainant's own personal data. The Commissioner therefore finds that section 40(1) is engaged and as this is an absolute exemption there is no public interest test to apply.

Other matters

13. Although they do not form part of this decision notice the Commissioner wishes to highlight the following matters of concern:

Correct access regime

14. Section 7 of the DPA gives an individual the right to request copies of personal data held about them – this is referred to as a right of subject access. When the Commissioner viewed the information in question, it was immediately apparent that it constituted personal data relating to the complainant. As the information being sought was in fact the complainant's personal data this request should have been dealt with as a subject access request rather than a request under the FOIA.
15. Whilst he notes that the complainant quoted the FOIA in his original request, in the Commissioner's opinion, responsibility for applying exemptions and determining whether a request should be considered under the FOIA or the DPA rests with the public authority and not the requestor. The Commissioner encourages public authorities to consider requests under the correct regime in the first instance. In this case the Council should have instigated its own procedures for handling subject access requests much earlier in its dealings with the complainant. Ideally, this should have been at the time it received the request.
16. The approach of the Commissioner where a request is made for information which is the requester's own personal data is that the public authority should deal with the request as a subject access request made under section 7 of the DPA. This action should be taken without it being necessary for the requester to make a further request specifying section 7 of the DPA.

17. The Commissioner therefore recommends and expects the Council to now consider whether the information requested, which is exempt from disclosure under section 40(1) FOIA, could be disclosed to the applicant in accordance with its obligations under section 7 of the DPA.

Right of appeal

18. 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@hmcts.gsi.gov.uk

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

19. 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.
20. 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

Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF