

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 June 2015

Public Authority: The London Borough of Hounslow
Address: The Civic Centre
Lampton Road
Hounslow
TW3 4DN

Decision (including any steps ordered)

1. The complainant has requested the names of the individuals who work in the Occupational Therapy Team at the London Borough of Hounslow (the Council). He has also requested a copy of the Council's *'Fair Access to Care Services'* criteria and the associated legislation. The Council provided a response outside of the statutory time of 20 working days. It provided the criteria and legislation but refused the names of the relevant individuals under section 40(2) of the FOIA.
2. The Commissioner's decision is that in failing to provide a timely response and part refusal to the request, the Council has breached section 10(1) and section 17(1) of the FOIA. However the Commissioner considers that the Council is correct to apply section 40(2) to the requested names. He is also satisfied that it has provided the remainder of the information. No further steps are required.

Background

3. In 2014 the complainant was in correspondence with a locum solicitor representing the Council. On 17 December 2014, the locum solicitor wrote to the complainant's solicitors and informed them that he had not received a letter the complainant had sent on 11 April 2014.
4. In this letter the solicitor explained that the issues raised had been passed to the Occupational Therapy Team at the Council and they had taken a *"different approach in the light of Fair Access to Care Services criteria"*.

Request and response

5. The complainant wrote to the solicitor on 24 December 2014 and provided him with proof of postage as evidence that his letter of 11 April 2014 had been correctly delivered. He also then submitted an information request to the solicitor. With reference to the solicitor's above statement, he asked for the following information:
 - the full names of those in the Council's team;
 - a copy of the Council's criteria; and
 - a copy of the Act which allowed such an approach.
6. The complainant did not receive a response from the Council.
7. The complainant contacted the Commissioner on 16 March 2015 to complain about the failure of the Council to respond to his request for information. The Commissioner wrote to him on 16 April 2015 and asked for some clarification. This was provided on 20 April 2015.
8. The Commissioner wrote to the Council on 28 April 2015 and asked it to respond to the information request. The Commissioner explained he considered the request to be for:
 - the names of the staff in the Council's Occupational Therapy Team;
 - a copy of their Fair Access to Care Services criteria; and
 - a copy of the legislation under which they work.
9. The Council responded to this information request on 15 May 2015. It explained it had no record of receiving the request but now provided a response.
10. It applied section 40(2) of the FOIA to the names of the staff in the Council's Occupational Therapy Team.
11. The Council also explained that the criteria and legislation relating to Fair Access to Care Services (FACS) is covered in the document '*Prioritising Need in the Context of Putting People First: A Whole System Approach to Eligibility for Social Care Guidance on Eligibility Criteria for Adult Social Care, England 2010 Department of Health*'. This document can be found at the following link:

http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/@ps/documents/digitalasset/dh_113155.pdf
12. The Council provided a copy of the above document to the complainant. It explained that the definitions of the four FACS eligibility bands –

critical, substantial, moderate and low – have been specified nationally, and have remained unchanged since 2003.

13. The Council explained that social care advisors used sensitive questioning as part of the contact assessment process to establish the extent of any social care need and made an initial recommendation about a resident's eligibility under FACS.
14. It explained that if a resident was not eligible for Adult Social Care support, the Council provided advice, information and signposted to other services and activities available within the community to support them with their daily lives.
15. It explained that residents assessed as having a substantial or critical need under FACS were supported to complete a Resident Led Assessment, designed to help people tell the Council what they could do for themselves or with help from friends and family, and to assess their additional support needs.
16. However, the Council explained that as the Care Act is now in place, FACS no longer applies.
17. The complainant complained about this response on 16 May 2015. He argued that the request had been received and that the response had not properly addressed the three questions.

Scope of the case

18. The complainant initially complained to the Commissioner that the solicitor is in breach of the standards of behaviour expected by the Solicitors Regulations Authority (the SRA). He argued that the solicitor has never worked for Hounslow Council. He explained that the SRA has informed him the solicitor has worked for the London Boroughs of Hillingdon and Harrow but it has no record of him working for Hounslow.
19. The complainant argued that the solicitor has failed to inform the SRA of his whereabouts and has breached the FOIA.
20. The Commissioner has explained to the complainant that he cannot investigate the professional standards or conduct of solicitors. The Commissioner has no remit to look into the registration of solicitors with the SRA, or the type of information they are obliged to provide to the SRA about where they are working.
21. Once a response was received, the complainant argued that it is "*wilfully misleading and convoluted*" and that the evidence has been "*fabricated*".

He has argued that the request was received and that it is "*baseless untrue*" to argue otherwise.

22. The Commissioner therefore considers the scope of this case to be concerned with the failure of the Council to respond to this information request within 20 working days. It is also concerned with the Council's application of section 40(2) to the first part of the request and the question of whether it has provided the requested information regarding the FACS criteria and associated legislation.

Reasons for decision

23. Section 10(1) of the FOIA states that a public authority in receipt of a request for information has a duty to respond within 20 working days. Section 17(1) of the FOIA sets out obligations for public authorities when refusing a request for information.
24. This information request was sent to the relevant solicitor on 24 December 2014 however the information rights team at the Council only learned of the request when the Commissioner wrote to it in April 2015.
25. As a response and some of the requested information was provided on 15 May 2015, the Council is found to be in breach of section 10(1) of the FOIA.
26. In failing to provide the complainant with a refusal notice for the remainder of the requested information within 20 working days, the Commissioner finds the Council to be in breach of section 17(1) of the FOIA.

Information provided

27. The Commissioner is satisfied that the Council has provided the complainant with the criteria and legislation relating to its Fair Access to Care Services (FACS).

Section 40(2) – Personal information

28. Section 40(2) of the FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles. The first principle of the Data Protection Act 1998 (the "DPA") states that personal data must be processed fairly and lawfully.
29. 'Personal data' is defined under section 1(1) of 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 the data controller or is likely to come into the possession of the data controller.

30. The withheld information in this case comprises the names of the staff in the Council's Occupational Therapy Team.
31. The Commissioner is satisfied that the requested names relate to living individuals who may be identified from that data. The requested data therefore constitutes personal data.

Would complying with section 1(1)(b) contravene the first data protection principle?

32. The first principle of the DPA states that personal data must be processed fairly and lawfully.
33. In considering whether it would be unfair to provide the requested names and whether this would therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:
 - the consequences of disclosure;
 - the data subjects' reasonable expectations of what would happen to their personal data; and
 - the balance between the rights and freedoms of the data subjects and the legitimate interests of the public.

Reasonable expectations

34. The Council has explained that the staff members are not senior members of staff. The Commissioner therefore considers that they would have a reasonable expectation that their identities would remain private and not be disclosed to the public under the FOIA.
35. The Commissioner appreciates that the requested information has been requested in the context of the professional lives of the individuals concerned. However as they are not senior employees of the Council the Commissioner is satisfied they would expect their identities to remain confidential.

Consequences of disclosure

36. The Council has not provided the Commissioner with any detailed explanation as to the possible consequences of disclosure. However, the Commissioner considers that as disclosure of the requested names

would be contrary to expectations and therefore unfair, such disclosure may cause some distress to the individuals concerned.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

37. The Council has argued that the interest in disclosure must be in the public interest and not in the private interest of the individual requester. It cannot see any legitimate public interest in disclosure in this case.
38. In such cases the Commissioner acknowledges that there is a tension between public access to information and the need to protect personal information. As far as possible, a public authority must be transparent and accountable for its actions. However, these individuals are not senior public figures and do not hold an elected office. The Council does not routinely publish the names of such individuals.
39. The Commissioner is therefore satisfied that providing the names of the relevant individuals would be unwarranted by reason of prejudice to the rights, freedoms and legitimate interests of the individual in question.
40. In view of the above, the Commissioner is satisfied that the Council is correct to refuse these names under section 40(2) of the FOIA.

Right of appeal

41. 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

42. 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.
43. 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

Rachael Cragg
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