

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 May 2017

Public Authority: Melbourn Parish Council
Address: Melbourn Community Hub
30 High Street
Melbourn
Cambridgeshire
SG8 6DZ

Decision (including any steps ordered)

1. The complainant requested a copy of a grievance report which was discussed by the council on 27 June 2016. The council refused the request on the basis that it had received a letter from a solicitor threatening legal action if the document was disclosed.
2. The Commissioner's decision is that the information is exempt under section 40(2) of the Act.
 - The Commissioner does not require the council to take any steps.

Request and response

3. On 20 July 2016 the complainant wrote to the council and requested information in the following terms:

"I would be grateful if you could please send me a copy of the grievance document as discussed at the full council meeting on the 27th June.

This request has been sent under the Freedom of Information Act."

4. The council responded on 4 August 2016. It said that it could not provide the information on the basis that the council had received a letter from solicitors, warning the council not to disclose the information.

5. On 7 September 2016 the complainant wrote again to the council and requested information in the following terms:

"I made a request under the Freedom of Information Act on 20 July to obtain a copy of the Grievance document presented to the Parish Council on the 27th June.

The Freedom of Information Act allows the Parish Council 20 days to respond to my request. Given the circumstances with the council, I have not pursued this.

However, I feel that sufficient time has now lapsed and that this document must be made available."

6. The council responded on 16 October 2016 saying that it was withholding the document on the grounds that disclosing it would risk it becoming involved in litigation.

Scope of the case

7. The complainant contacted the Commissioner on 25 October 2016 to complain about the way his request for information had been handled.
8. His complaint is that the information should have been disclosed to him.

Reasons for decision

9. The Commissioner contacted the council to determine its grounds for withholding the information. In its response the council clarified that it was seeking to withhold the information under the exemption in section 40(2) of the Act (personal data).
10. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the Act would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').
11. In order to rely on the exemption provided by section 40(2), the requested information must therefore constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as follows:

“personal data” means 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 intentions of the data controller or any other person in respect of the individual.”

12. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA. The Commissioner notes in this case that the council said that disclosure would breach the first data protection principle.

Was a Section 10 Notice issued to the council?

13. Broadly speaking, section 10 of the DPA provides an individual with a right to write to a data controller and ask it to stop processing their personal data where that processing will, or is likely to cause the individual damage or distress which would be unwarranted.
14. Although the letter to the council from solicitors threatened legal action if the information were to be disclosed, the solicitors did not state who they were representing. As such the council was not able to take the letter as a section 10 notice requiring it not to disclose the information.

15. For the purposes of providing clarity, the solicitors also wrote to the Commissioner to provide their case as to why the report should not be disclosed. The Commissioner has taken into account their comments when making her decision on this complaint.

Is the withheld information personal data?

16. As explained above, the first consideration is whether the withheld information is personal data.
17. The withheld information is a report of a grievance against an individual. It contains details of the investigation which includes details of the allegations, the response, and witness statements relating to the investigation. It also provides information on other third parties who took part in, or who carried out the investigation.
18. The Commissioner is therefore satisfied that the information is the personal data of a number of third parties. Primarily however it relates to two individuals, the initiator of the grievance and the individual which the grievance relates to.

Does the disclosure of the information contravene any of the data protection principles?

19. The council argues that the disclosure of the information would contravene the first data protection principle.
20. The first data protection principle states that:
- "Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –*
- (a) at least one of the conditions in schedule 2 is met, and*
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."*
21. In deciding whether disclosure of this information would be unfair, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subjects, and the consequences of disclosure on those data subjects. She has balanced these against the legitimate interests of the requestor and the public in receiving the withheld information.

Nature of the information and reasonable expectations

22. The Commissioner recognises that information relating to investigations against individuals carries a strong general expectation of privacy due to the likelihood that disclosure could cause the data subjects' distress and could also cause permanent damage to their future career prospects and/or their reputation generally.
23. In his guidance on personal data the Commissioner states that the expectations of an individual will be influenced by the distinction between his or her public and private life and this means that it is more likely to be fair to release information that relates to the professional life of the individual. However, information relating to an internal investigation will carry a strong general expectation of privacy. This was recognised by the Information Tribunal in the case of *Rob Waugh v Information Commissioner and Doncaster College (Appeal no. EA/2008/0038)* when it said at paragraph 40 that:

"...there is a recognised expectation that the internal disciplinary matters of an individual will be private. Even among senior members of staff there would still be a high expectation of privacy between an employee and his employer in respect of disciplinary matters."
24. Further to this the Commissioner considers that both the instigator of the grievance and those providing evidence to the panel would have had no real expectations that their submissions may be subsequently disclosed to the wider public via the medium of an FOI request. As regards the third parties, their involvement was to simply describe their account of the events, and the actions of the individuals involved. The individuals were providing their account of the issues concerned for a consideration of the grievance by the council. They would not have expected that information to subsequently be disclosed more widely and may well be distressed by the subsequent disclosure of the information.
25. Although the Commissioner considers that the withheld information in this case mainly relates to a mixture of the particular individuals professional and personal life, given the nature of it, he is satisfied that the individuals directly concerned, along with the third parties, would have a reasonable expectation of confidentiality and privacy in relation to the withheld information.
26. Given the nature of the investigation and the full and frank content of some of the information, the Commissioner is satisfied that there would have been a strong expectation of confidentiality and privacy in this case by all of the parties concerned.

Consequences of disclosure

27. In order to fully assess whether disclosing the information would be fair the Commissioner must consider whether disclosure of the information would cause unwarranted damage or distress to the data subjects.
28. Investigations into the actions of an individual (or individuals) are obviously a difficult process for all concerned. The central consequence of disclosure relates to the loss of privacy for the individuals involved but in some cases the information and allegations may, rightly or wrongly, tarnish their personal and their professional reputations.
29. Details of the nature of the grievance would be disclosed to the public and the individuals who were associated with the investigation would, in general, not be expecting their contributions to be disclosed to the world at large. The disclosure of the information would be likely to be prejudicial to the reputations of at least some individuals, either the instigator of the grievance or those who the grievance was against. Similarly some other contributors may be unhappy about a disclosure of their comments or statements to the council.
30. In relation to the third parties who gave evidence, the Commissioner considers that any potential media interest could be distressing to the individuals'. The Commissioner considers that disclosure would cause distress due to the nature of the information, particularly as she has found that disclosure of the information requested would not have been within the individuals' reasonable expectations. The Commissioner notes that there has previously been press speculation regarding the issues at the council, and within a small community this is likely to be exacerbated by any further press coverage outlining the specifics of the complaint and witness statements.

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

31. The Commissioner accepts that in considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for its own sake along with specific interests. In this case the legitimate interest is in allowing the public to know how an investigation into the actions of a member or members of the council has been investigated and the outcome of that investigation.
32. As mentioned, there have been online newspaper articles written about the investigation and the subsequent refusal of the council to disclose its findings and some of the recommendations of the panel. The newspaper articles suggest that the grievance related to allegations of bullying and harassment by certain individuals at the council, and wider concerns regarding potential dysfunctionality at the council.

33. The Commissioner recognises therefore that the public does have legitimate concerns about the council and its running, and that a disclosure of the withheld information would shed greater light on this.
34. However this needs to be balanced against the rights of the individuals to avoid unwarranted intrusion into their private life and potential damage to their reputations.

Conclusion on the analysis of fairness

35. Taking all of the above into account, the Commissioner concludes that it would be unfair to all of the parties involved to disclose the requested information. It is clear that disclosure would not have been within their reasonable expectations at the time that they provided their information and that the loss of privacy could cause unwarranted distress to some of the parties.
36. The Commissioner acknowledges that the public has a legitimate interest in knowing how the grievance was investigated and the outcome of that investigation but in this case she considers that this is outweighed by the individuals' strong expectations of privacy and their right not to have and unwarranted intrusion into their private lives.
37. The Commissioner also notes that the partial disclosure of some of the recommendations of the council goes some way to providing a degree of transparency over the outcome of the investigation as it affects the council as a whole. This, to a degree, meets the public's legitimate interest in knowing that the council has addressed the issues which affected the council as a whole.
38. The Commissioner has therefore decided that the council was entitled to withhold the information under section 40(2), by way of section 40(3)(a)(i).
39. As the Commissioner has decided that the disclosure of this information would not comply with the fairness requirement of the first data protection principle she has not gone on to consider whether there is a Schedule 2 condition for processing the information in question.

Right of appeal

40. 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

41. 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.

42. 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

Ian Walley
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