

Freedom of Information Act 2000

Decision notice

Date: 11 June 2013

Public Authority: Darlington Borough Council
Address: Town Hall
Feethams
Darlington
DL1 5QT

Decision (including any steps ordered)

1. The complainant requested information relating to accusations of sexual abuse made by a named individual against anyone other than another named individual. Darlington Borough Council (the Council) refused to confirm or deny whether any relevant information is held, relying on the exemption provided by section 40(5)(b)(i) of the Freedom of Information Act (the Act). The Council determined that to reveal whether any information is or is not held would breach one of the data protection principles. The Commissioner's decision is that the Council correctly applied the exemption. No further action is required.

Request and response

2. On 3 September 2012, the complainant wrote to the Council and requested:
*"I would like any information regarding [named individual A] on other persons she has accused of sexual abuse previous to [named individual B].
Any information prior to November 2006."*
3. The Council responded on 23 October 2012. It refused to confirm or deny whether it held any relevant information under section 40(5)(b)(i).
4. Following an internal review the Council wrote to the complainant on 20 November 2012. It stated that the original decision was being upheld.

Scope of the case

5. The complainant wrote to the Commissioner on 28 November 2012 to complain that her request for information had been refused by the Council.
6. The Commissioner considers the scope of the case to be whether the Council is correct to refuse to confirm or deny whether any information relevant to the complainant's request is held.

Reasons for decision

7. Section 40(5)(b)(i) of the Act states that:

"(5) The duty to confirm or deny –

(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"

8. When deciding whether section 40(5)(b)(i) applies, the Commissioner determines whether the requested information would constitute personal data. He then considers whether the act of confirming or denying that the requested information is held would disclose personal data, and whether this disclosure would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (DPA).

Is the requested information personal data?

9. The DPA defines personal data as:

"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,"

10. Any information relevant to the complainant's request would relate to individual A, who could clearly be identified by that information. The

Commissioner is satisfied that any held information relevant to the request would be individual A's personal data.

Would confirming or denying that the requested information is held constitute a disclosure of personal data?

11. If the Council was to state that the requested information was or was not held, it would be confirming whether or not individual A had made or been connected to allegations of sexual abuse. Therefore the Commissioner considers that to either confirm or deny whether relevant information is held would disclose personal data.

Would confirming or denying that the requested information is held breach a data protection principle?

12. In the Council's response to the complainant it stated that if any information were held it would be exempt under section 40(2) as it was third party personal data, and that disclosure would be unfair.
13. In making his decision, the Commissioner has considered whether confirming or denying that information was held would contravene the first data protection principle, which states that personal data must be processed fairly and lawfully. In making his decision he has taken the following factors into account:
- The reasonable expectations of individual A
 - The consequences of disclosure
 - The balance between the rights and freedoms of the named individual A and the legitimate interests of the public in having the requested information disclosed.

Reasonable expectations of individual A

14. Any disclosure made through the Act constitutes the release of information into the public domain. Allegations of sexual abuse are complex and highly personal issues, and the Commissioner considers that it is reasonable to expect that this information would not be put into the public domain.
15. The Commissioner's view is that individual A would have a reasonable expectation that the Council would neither confirm nor deny whether it held information of the nature sought by the complainant.

Consequences of disclosure

16. To confirm or deny whether relevant information was held would confirm whether the individual A had made or been connected to allegations of

sexual abuse. In instances where an individual makes such an accusation they are afforded anonymity, and disclosure of this information would completely undermine the reasons why this is in place. The potential consequences could be damaging for individual A and could have severe implications for their wellbeing.

Balance between the rights and freedoms of the data subject and the legitimate interests of the public

17. In their submissions to the Commissioner the complainant has stated that this information should be disclosed for "public protection", and expressed the view that individual A is "dangerous". However, the Commissioner has not seen any evidence to substantiate this claim, nor is he aware of any reason why the Council would be serving a strong legitimate interest by disclosing whether this information is held.
18. The Commissioner's view is that the overriding factors in deciding whether disclosure would be fair in this case are that it would go against the reasonable expectations of individual A and that potentially there are adverse consequences from disclosing personal data of this nature.
19. The Commissioner's decision is that to disclose individual A's personal data would breach the first data protection principle as it would be unfair. He therefore upholds the Council's application of the exemption to disclosure provided by section 40(5)(b)(i).

Right of appeal

20. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

21. 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.
22. 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

Alexander Ganotis
Group Manager – Complaints Resolution
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