



Mr. / Mrs. R Soles

By email only to: [request-8696-3c52bd84@whatdotheyknow.com](mailto:request-8696-3c52bd84@whatdotheyknow.com)

**Legal and Democratic Services**

Sessions House  
County Hall  
Maidstone  
Kent ME14 1XQ  
DX: 123693 Maidstone 6  
[www.kent.gov.uk/legal](http://www.kent.gov.uk/legal)

Direct Dial Ext: (01622) 694416

Fax Number: (01622) 694402

E-mail address: [wendy.morse@kent.gov.uk](mailto:wendy.morse@kent.gov.uk)

Ask for: Wendy Morse

Your Ref: Common Purpose

Our Ref: FOI/09/207

Date: 7<sup>th</sup> May 2009

Dear Mr. / Mrs. Soles,

**Re: FOI/09/207 Complaint concerning the handling of a request for information made under the Freedom of Information Act 2000 ("FOIA")**

I write following your email of 24<sup>th</sup> March 2009, complaining about the response received to your FOIA request concerning Common Purpose training. Following receipt of any such complaint it is Council policy that the handling of your FOIA enquiry is looked at by an independent reviewer and it is in this context that I have been instructed. The remit of my review is to look at whether or not the Council has complied with its obligations under the FOIA.

**Your complaint:**

Your complaint concerns the completeness of the response received as you requested the names of members of staff that have attended Common Purpose training but this information was withheld. The response letter dated 13<sup>th</sup> March 2009 did not disclose the names of the members of staff and explained that this was on the basis that the members of staff who attended were not Chief Officers and therefore disclosing their names would be a breach of the Data Protection Act 1998 ("DPA"). The exemption contained in s40(2) of the FOIA was asserted as the basis for this non-disclosure. The officers involved determined that the first condition as contained in section 40(3)(a)(i) FOIA was satisfied on the basis that the information requested was personal data within the meaning in s1(1) of the DPA and that disclosure of this information would breach the first data protection principle (it would be unfair): they therefore relied on the s40(2) exemption and withheld the personal data. If the first condition in section 40(3)(a)(i) is met then the exemption is an absolute one, this means that it does not require officers to then apply the public interest test before deciding to withhold the information.

**Geoff Wild** LL.B, Dip.LG, Solicitor  
Director of Law & Governance

**CHIEF EXECUTIVE'S DEPARTMENT**



**My review:**

In carrying out my review I have looked at the response sent to you, I have been in contact with the main person who has been involved in your enquiry, and have been provided with copies of relevant email correspondence and attachments. I have also reviewed some of the guides available at [www.ico.gov.uk](http://www.ico.gov.uk) . It is my conclusion that the Council has partly complied with its duties under the FOIA in respect of your request. The reasoning behind this conclusion is set out below, if you have any queries then please do not hesitate to contact me to discuss this.

**Personal data and the s40 FOIA exemption:**

In order to determine if officers correctly applied the s40(2) exemption it has been necessary to determine the following 2 questions. The answers to both questions must be affirmative in order for the s40 exemption to be relied upon. I have included my conclusions under each question below.

**Question 1)** Does the information requested amount to personal data within the meaning in section 1(1) of the DPA 1998;

Providing the names of the employees that have attended Common Purpose training would be providing data that relates to living individuals who could be identified from that data or from other information in the possession of the Council. The data is therefore personal data within the meaning in section 1(1) DPA 1998. This means that asking for the names of employees who had attended Common Purpose training was a request for the disclosure of the personal data of third parties.

**Question 2)** If the answer to question 1 is yes would disclosure of that personal data breach any of the data protection principles.

Having concluded that it is personal data the second consideration is whether or not the disclosure of the personal data would breach any of the data protection principles. Officers involved concluded that disclosure would be a breach of the first data protection principle which provides 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...."*

The main point of consideration in this instance for the Council to determine is whether it would be fair to the individuals to name them and thereby disclose their personal data. Personal information must only be released where there is a genuine reason to disclose and it would not involve unfairness to the individual. In deciding to withhold the names of the individual employees the officers involved took account of the following factors;

- the seniority of those staff / junior positions held by those staff who had attended the training (no chief officers attended such training, there were however two officers at Director level),

- whether the information relates to the public function of the individual as opposed to their private life (in this case it clearly relates to their public role),
- whether the individual would expect their role to be subject to public scrutiny and disclosure e.g. are they chief officers/ very senior officers who might expect some public interest in them personally, or do they have a very public facing role (conceivably the two Directors may expect some level of public interest in them),
- would the individual employees reasonably expect that this information could be released (at the time when these officers attended the training they would not of been aware of the possibility of their names being released to the public at large in the future, however all staff should be aware of the FOIA),
- what does the Council advise staff regarding disclosure of their data (the Council advises staff that their personal data won't generally be disclosed to third parties without their consent); and
- whether or not such a release would cause unwarranted damage or distress to the individual e.g. is there a high level of media scrutiny/ bad press around the issue.

There is a presumption in favour of protecting the privacy of individuals so the release of personal information will only be fair if there is a genuine reason to disclose it. Taking account of the information above it is my conclusion that to disclose this data for more junior staff/ those not in public facing roles/ management roles would not be fair to the individuals concerned and therefore this would breach the first data protection principle. Therefore the s40(2) exemption was in my view correctly applied in relation to these individuals.

Taking account of the factors set out above and considering the two Directors who attended this training I did not think it would be unfair to disclose this personal data. I have therefore contacted them and they have both consented to the disclosure of there names; this means that one of the Schedule 2 DPA conditions is met and the disclosure of their names to you will be fair and lawful. The two Directors who have attended Common Purpose courses are Robert Hardy, Director of Improvement & Engagement and Linda Davies, Divisional Director of Environment and Economy.

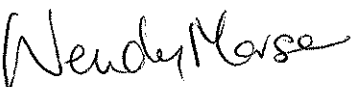
**Further request:**

In a later email dated 9<sup>th</sup> April 2009 you asked what tangible benefit the public receives from members of staff attending Common Purpose training courses. Information on the training courses available and the intended benefits for staff can be found on the Common Purpose website at [www.commonpurpose.org.uk](http://www.commonpurpose.org.uk) . I trust that this answers your query.

I appreciate that you may be disappointed by the outcome of my review in that I have determined that 19 names should still be withheld, however I hope you are satisfied that due consideration has been given to your request. If you should still have any unanswered questions then please do not hesitate to contact me to discuss this.

If you are unhappy with the decision taken by the Council in this review you can appeal to the Information Commissioner who oversees compliance with the FOIA. Details of what you need to do, should you wish to pursue this course of action, are available from the Information Commissioner's website at [http://www.ico.gov.uk/complaints/freedom\\_of\\_information.aspx](http://www.ico.gov.uk/complaints/freedom_of_information.aspx)

Yours sincerely,

  
Wendy Morse  
for Director of Law & Governance

This communication may contain advice or information, that attracts legal professional privilege and may be exempt from disclosure under the Data Protection Act 1998 or Freedom of Information Act 2000. Accordingly, do not disclose this communication to a third party without first taking legal advice from the sender.