

**SENT BY EMAIL**

**Email:** 

**Our Ref: FOI761**

27 June 2013

Dear 

**Subject: Freedom of Information (FOIA) Request**

Further to our acknowledgement letter dated 03 June 2013, thank you for your email of 02 May 2013 to Mr. Keith Ashcroft, headed, "Investigatory Sub-Committee Intervention Request - Doncaster Council re-visited!"

In your email of 02 May 2013 to the EHRC, you submitted the following request for information:

- **"I would like to know, [if I have such a right under FOI Legislation] what dialogue / support have EHRC been offering Doncaster Council over the years and why there is still no evidence of Public Sector Equality Duty compliance - ref John Wadham letter?"**

Your email of 02 May was forwarded by the EHRC Legal Team to our Corporate Communications Team for a response to be prepared to your FOIA request.

We respond to your request as follows:

**Our response**

With regard to your request for information; 'what dialogue/support have the EHRC been offering Doncaster over the years' we have interpreted this to mean information amounting to dialogue **between** the EHRC and Doncaster Council that the Commission may hold. We have not restricted your request to information that would simply amount to the EHRC's *support* as evidenced in correspondence that we have sent **to** Doncaster Council.

We are pleased to attach together with this cover letter, correspondence between the EHRC and Doncaster Metropolitan Borough Council (DMBC). Please see the accompanying zip file entitled 'DialogueBetweenEHRCAndDMBC-Redacted'.

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Please note, the names of EHRC as well as Doncaster Council staff as contained within the correspondence we hold, have not been disclosed as they have been assessed as engaging Section 40 (2) of the Freedom of Information Act (FOIA). An explanation of this exemption and how it applies to this request is provided below.

**Section 40(2) Freedom of Information Act 2000 (FOIA) – personal information governed by the Data Protection Act 1998 (DPA)**

Section 40 (2) states: "Any information to which a request for information relates is also exempt information if -

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.

Section 40 (3) (a) states that the first condition is –

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of 'data' in section 1 (1) of the Data Protection Act 1998 ("the DPA"), that the disclosure of the information to a member of the public otherwise than under this Act would contravene -

- (i) any of the data protection principles...

Section 40 (2) FOIA applies to the exemption of third party data from disclosure (i.e. personal data of people who are not themselves the data subjects making a data subject request), which would, if disclosed, breach any of the principles under the DPA.

The first principle states: "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."

In this case we only need to consider Schedule 2 as the information requested is not classed as sensitive personal data.

Schedule 2 contains six conditions of which two are relevant to this request:

- 1 The data subject has given his consent to the processing.
- 6(1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where

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the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

In considering whether the disclosure of third party's personal details, in response to your information request, would be fair and lawful processing of personal data, we have taken into account the following matters:

- Whether the member of staff has consented to disclosure
- Whether the personal information is already in the public domain
- The expectation of the individuals that their names may be disclosed.
- The nature of the individuals' role i.e. whether their work is mainly inward or outward facing
- The seniority of the individual

Having considered the above, we have determined that disclosure of the names of EHRC and Doncaster Council staff, below the level of Director and also direct telephone numbers and email addresses of the respective staff members, would breach the first principle under the DPA.

Section 40(2) is an absolute exemption, which means that if the condition is met there is no additional public interest test to apply under the FOIA. However, in the interest of transparency below is how we arrived at our conclusion.

In this instance, in relation to the names of EHRC and Doncaster Council staff, and direct contact details of respective staff members below the level of Director, we consider that unfair and unlawful processing of personal data would take place if the information were disclosed because:

- There is an expectation that details of staff below Level 6 would generally not be disclosed, subject to case by case consideration.
- The EHRC staff roles contained within the correspondence we hold are below the level of Director (level 6)
- Disclosure of direct dial numbers and direct email addresses is likely to result in unwarranted public intrusion into the working life of the individuals concerned as disclosure through FOIA is disclosure to the public at large.

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If you are unhappy with our response and wish to request an internal review of our decision please write to the Corporate Communications Team at the address below.

During the independent review the handling of your information request will be reassessed by Commission staff afresh.

If following the review you are not content with the outcome you may apply directly to the Information Commissioner's Office (ICO) at:

The Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Generally the ICO cannot provide a decision until you have exhausted the review process within the Equality and Human Rights Commission.

If the Commission can be of any further assistance please contact us using the details provided below.

Yours sincerely

Oliver Varney

Corporate Communications Officer

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### **Schedule of Information attached to our response letter**

Appendix 1- Electronic zip folder entitled: 'DialogueBetweenEHRCAndDMBC-Redacted'

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