

Our ref: 25440816  
28 June 2021

Abdul Sadique  
???

Account reference:request-768867-a8b8b5cd@whatdotheyknow.com

## Freedom of Information Act 2000

Dear Abdul Sadique

This request is being handled under the Freedom of Information Act 2000.

### Request

Names of employees for HR Business Manager in Birmingham City Council's Schools HR Team that worked with Lozells primary school for their redundancy and restructure during January 2019 - October 2020

### Response

Having identified the information you have requested; we have established this is personal data relating to a third party. The Council has obligations to protect the personal information of individuals under the Data Protection Act. The Freedom of Information Act provides exemptions to the disclosure of information where it is considered that the data requested is the personal data of identifiable individuals.

This information would be withheld on the basis that it is third party personal data as defined in the General Data Protection Regulation 2016/679 (GDPR) and the Data Protection Act 2018 (DPA 2018).

The exemption would apply as the Council considers that disclosure of this information would not be fair or lawful, as the individual/s concerned would not expect/ have not consented to their personal information to be disclosed in these circumstances, and we consider that the individual/s have a reasonable expectation of privacy.

Section 40(2) of the Freedom of Information Act (FOIA) states that the personal data of a third party is exempt from disclosure under the FOIA if to do so would contravene any of the data protection principles. In this case, the relevant condition is contained in section 40(3A)(a) of the FOIA.

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Personal data is defined in sections 3(2) and (3) of the Data Protection Act 2018 (DPA) and means any information relating to an identified or identifiable living individual. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

We can confirm names, job titles and contact details of third parties including BCC employees in a junior role have been withheld under section 40(2) FOIA as it both relates to and identifies those staff. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.

The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. Disclosure of personal data to the world at large pursuant to a FOIA request must be justified by reference to one or more of the conditions from Article 6(1) GDPR, and it must be fair to the data subject in all the circumstances.

The first data protection principle states that personal data must be 'processed lawfully, fairly, and in a transparent manner apparent to the data subject'.

To determine whether or not disclosure is lawful, the Council considered whether there is a lawful basis for processing in Article 6(1) of the GDPR:

*"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interest or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child."*

The Council considers that the lawful basis most likely to be relevant in relation to a request for information under the FOIA is Article 6(1)(f); legitimate interests. In considering the application of Article 6(1)(f) in the context of a request for information under the FOIA it is necessary to consider the three-part test: -

Legitimate interest test: Whether a legitimate interest is being pursued in the request for information

Necessity test: Whether disclosure of the information/confirmation or denial that it is held is necessary to meet the legitimate interest in question;

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Balancing test: Whether the above interests override the interests, fundamental rights and freedoms of the data subject.

#### Legitimate interests

In considering any legitimate interest(s) in the disclosure of the requested information under the FOIA, BCC recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.

The Council has considered the principles of accountability and transparency with regards to the information requested, in particular whether the release of the personal data would provide a greater level of accountability and transparency in the business of the Council. The individuals concerned do not occupy senior roles within the Council by reference to the Council's organisational structure and job grading. They provide internal services to the Council, principally in respect of supporting the Cabinet Office and providing administrative support to senior managers and leadership. In practice, these data subjects are not decision-makers, nor are they public-facing, and none of them are directly accountable to the public. The Council therefore considers that there is very little legitimate interest in the release of the personal data.

#### Is disclosure necessary

'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity which involves consideration of alternative measures, and therefore disclosure not be necessary if the legitimate aim could be achieved by something less.

Having identified the legitimate interests in this case of transparency and staff accountability, the question is whether these can be met without the release of the personal data.

#### Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

It is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.

In considering this balancing test, BCC has taken into account the following factors:

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the potential harm or distress that disclosure may cause; whether the information is already in the public domain; whether the information is already known to some individuals; whether the individual expressed consent to the disclosure; and the reasonable expectations of the individual.

Details of junior members of staff (Grade 7 and below)

BCC processes personal data of its employee not just for the purposes of carrying out their paid roles i.e. for HR records and processing of payroll but for internal services. The junior employees do not occupy senior roles within the Council by reference to the Council's organisational structure and job grading. In practice, these data subjects are not decision-makers, nor are they public-facing. They provide internal services to the Council, principally in respect of supporting the Cabinet Office and providing administrative support across the organisation. Correspondence from the Council to members of the public does not go out in the names of these data subjects. This is true in respect of their work in general terms, and in respect of their work in this instance in particular. They would not expect BCC to process their details for any reason other than the above. As such, and in accordance with the Council's established practice, these data subjects reasonably expected that their personal data would not be disclosed to the public in this context.

It is the Council's conclusion that it will be unfair and thus potentially breach the 1st Principle under Article 5 of the GDPR to disclose personal data in particular, of those involved who are often not of the level of seniority of staff where the Council does disclose details about staff; the individuals are relatively junior and none of them are directly accountable to the public.

This response therefore acts as a refusal notice under section 17 of the FoIA.

Please quote the reference number 25440816 in any future communications.

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within 40 working days from the date this authority issued its initial response to your original letter and should be addressed to:

Corporate Information Governance Team  
PO Box 16366  
Birmingham  
B2 2YY  
Email: [infogovernance@birmingham.gov.uk](mailto:infogovernance@birmingham.gov.uk)

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If you are still dissatisfied with the Council's response after the internal review you have a right of appeal to the Information Commissioner at:

The Information Commissioner's Office

Website: [www.ico.org.uk](http://www.ico.org.uk)

We would like to hear your views on our service. If you'd like to tell us how we did, you can complete our feedback form online at <http://www.yourwebsite.co.uk/foifedback>

I will now close your request as of this date.

Yours faithfully  
Digital and Customer Service

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