

KIRKLEES COUNCIL**REFUSAL NOTICE****SECTION 17 FREEDOM OF INFORMATION ACT 2000****REQUEST BY HELEN CARVER FOR INFORMATION REGARDING NAMES OF STAFF WORKING IN SPECIAL EDUCATIONAL NEEDS****1. Request**

The request detailed below is for:

Please can you send me an up to date Organisational Structure Chart for the Special Educational Needs department including names.

I confirm that the Council holds the information requested but for the reasons set out in this notice considers that some of the information highlighted in yellow above is exempt for the purposes of the Freedom of Information Act because it is personal information.

The Council has had regard to the Information Commissioner's Guidance:

- The Guide to Freedom of Information (August 2016)
- Personal information (section 40 and regulation 13) Freedom of Information Act
- Environmental information Regulations (December 2014)

2. Reasons

Section 40 of the Fol Act relates to personal information. The relevant subsection of Section 40 provides that:

(2)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.

(3)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, 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, or

(ii)section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b)in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4)The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

The full wording of Section 40 is set out at Appendix 1 of this refusal notice.

Personal data is information which relates to a living individual who can be identified from the requested information or from a combination of that information and other information known to the data controller.

In this case, the information requested includes the names of Council officers, which is the personal data of those individuals. The Council considers that whilst current senior managers and decision makers can reasonably expect their identities to be disclosed into the public domain, more junior members of staff would not.

Personal data of a third party is exempt from disclosure under Section 40(2) of the Freedom of Information Act 2000 if its disclosure to a member of the public would contravene any of the Data Protection Principles.

In this case the Council considers that to provide the names and email addresses would breach the first Data Protection Principle which requires personal data to be “*fairly and lawfully processed*”.

The first data protection 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.

The Schedule 2 conditions relevant to the first data protection principle are set out in Appendix 2 of this refusal notice.

The Council believes that disclosure of the information requested would give rise to actionable breach of data protection principle 1, which states that personal information must be processed fairly and lawfully. The conditions for processing personal information are largely based on the “necessity” to process personal information and the Council does not consider the disclosure of the requested information to be necessary. Neither does the Council have the consent of those individuals to release their personal data into the public domain.

Section 40 is an absolute exemption which means that in deciding whether or not to withhold information the Council is not required to take account of the public interest.

The request for disclosure of the highlighted information is therefore refused.

3. Review

If you are not content with the handling of your request, you have the right to ask for an internal review. Requests for internal reviews should be submitted within 2 months of the date of receipt of the response to your original request and should be addressed to

the Monitoring Officer, 1st floor, Civic Centre 3, Market Street, Huddersfield HD1 2EY. Alternatively, you can send an email to: monitoring.officer@kirklees.gov.uk.

It would assist if any such request for a review were clearly marked as such and specifically referred to this refusal notice.

If you are not content with the outcome of any review you have the right under section 50 of the 2000 Act to apply to the Information Commissioner for a decision as to whether your request for information has been dealt with in accordance with the requirements of the Act. The Information Commissioner's website is at www.ico.org.uk and gives more information about the role and duties of the Commissioner. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Signed

Information Governance Officer

5 December 2017

Appendix 1

Section 40 (Personal Information)

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) 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.

(3) 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, 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, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject’s right of access to personal data).

(5) The duty to confirm or deny—

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(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, or

(ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject’s right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.

(7) In this section—

- *“the data protection principles” means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;*
- *“data subject” has the same meaning as in section 1(1) of that Act;*
- *“personal data” has the same meaning as in section 1(1) of that Act.*

Appendix 2

The Schedule 2 conditions relevant to the first data protection principle

1 The data subject has given his consent to the processing.

2 The processing is necessary—

(a) for the performance of a contract to which the data subject is a party, or

(b) for the taking of steps at the request of the data subject with a view to entering into a contract.

3 The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.

4 The processing is necessary in order to protect the vital interests of the data subject.

5 The processing is necessary—

(a) for the administration of justice,

(aa) for the exercise of any functions of either House of Parliament,

(b) for the exercise of any functions conferred on any person by or under any enactment,

(c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or

(d) for the exercise of any other functions of a public nature exercised in the public interest by any person.

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

(2) The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied