



**Directorate for Deputy Chief Executive
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Dear Sarah

Internal Review

I write in response to your email, received on 11 April 2024 for a review of Buckinghamshire Council's response to your request detailed below. The purpose of the review is to allow a fresh independent look at your request by a person who has had no previous association with the request.

Your Original Request

Re:Whistleblowing report

Please can you confirm all the recommendations in the report were actioned. Please confirm which reports they were and the outcomes. I was not requested further information and was not permitted to speak with the IIO which was not best practice.

Our Original Response

Section 1(1)(a) of FOIA states that anyone who requests information from a public authority is entitled to be told whether the authority holds that information.

However, section 40(5B)(a)(i) of FOIA allows a public authority to refuse to confirm or deny if it holds information if that information would (if it existed) be the personal data of a third party.

Disclosure under FOIA is effectively an unlimited disclosure to the public. We must therefore consider the wider public interest issues and general fairness when deciding whether to confirm or deny the information is held.

We must also determine whether such a confirmation or denial would contravene any of the data protection principles.

In that instance, if information were held, disclosure would cause a significant invasion of privacy. There is insufficient legitimate interest to outweigh any data subjects' fundamental rights and freedoms, and that confirming whether the requested information is held would not be lawful.

Your Request for an Internal Review

I wish to raise an internal review towards your reply that you can neither confirm or deny that recommendations have been followed.

[Personal data redacted]

Please can you confirm all the recommendations in the report were actioned. Please confirm which reports they were and the outcomes. I was not requested further information and was not permitted to speak with the IIO which was not best practice.

Consideration

The Information Commissioner advises: "The starting point, and main focus for NCND [neither confirm nor deny] in most cases, will be theoretical considerations about the consequences of confirming or denying whether or not a particular type of information is held."

The purpose of this Internal Review is not to focus on whether the information is held but to ascertain whether the Council was entitled to neither confirm nor deny whether it holds the information you have requested.

Section 40(5B)(a)(i) of FOIA provides that the duty to confirm or deny whether information is held does not arise if it would contravene any of the principles relating to the processing of personal data set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR') to provide that confirmation or denial.

The Commissioner's guidance on personal data explains that merely confirming or denying that a public authority holds information about an individual or individuals, can itself reveal something about that individual/those individuals to the wider public.

For the Council to be entitled to rely on section 40(5B)(a)(i) of the FOIA to refuse to confirm or deny whether it holds information falling within the scope of the request, the following two criteria must be met:

- Confirming or denying whether the requested information is held would constitute the disclosure of a third party's personal data;

And

- Providing this confirmation or denial would contravene one of the data protection principles.

To confirm or deny that the Council holds information on which recommendations were actioned and the outcomes would amount to a release into the public domain of personal information about an individual or individuals involved in a whistleblowing investigation. The individual's / individuals' rights under the Data Protection Act 2018 (DPA) and the UK General Data Protection Regulation (GDPR) would therefore be breached, even if any names were redacted.

The FOIA only allows the processing of personal data if that processing would be compliant with the Data Protection principles. These principles are outlined under section 34 of the DPA 2018 and under Article 5 of the UK GDPR.

In this instance, processing this information (by issuing a confirmation or denial) would breach the first principle, that of 'lawful, fair and transparent' processing. When balancing the legitimate interests of the public against the interests of the individual(s) and the harm and distress that would be caused by a confirmation or denial, the processing of information in this way becomes unlawful.

I have also considered: would the confirmation or denial that the requested information if held constitute the disclosure of a third party's personal data?

Section 3(2) of the DPA 2018 defines personal data “as any information relating to an identified or identifiable living individual”.

The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

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.

As previously mentioned, ascertaining whether the use of ‘NCND’ is correct involves theoretical considerations – I can conclude that information on recommendations/outcomes of a whistleblowing report (if held) would hypothetically involve personal data.

For the reasons explained above, I concur with the original response that the information would (if it existed) be the personal data of a third party and that it was correct to conclude that there was insufficient legitimate interest to outweigh any data subjects’ fundamental rights and freedoms.

Decision

The final decision of this review is that we are upholding our original response.

If you are not content with the outcome of this Internal Review you have the right to apply directly to the Information Commissioner’s Office for a further decision. The Information Commissioner can be contacted at:

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

http://www.ico.gov.uk/complaints/freedom_of_information.aspx

Helpline on 0303 123 1113

Yours sincerely

Francisca Harpur
Senior Information Governance Officer