

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 16 May 2011

Public Authority: West Berkshire District Council
Address: Council Offices
Market Street
Newbury
Berkshire
RG14 5LD

Summary

The complainant asked West Berkshire District Council ("the Council") to disclose the precise salary of a member of its staff. The Council refused to provide the information citing the exemption under section 40 of the Freedom of Information Act 2000 ("the FOIA"). It also referred to the exclusion for vexatious and repeated requests under section 14. The Commissioner decided that the information was exempt under section 40(2) and he therefore does not require any steps to be taken.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the FOIA. This notice sets out his decision.

The Request

2. On 6 June 2010 the complainant wrote to the Council and requested information in the following terms:

"I notice that [name of staff member] calls herself [job title]. I assume that she has responsibility for all matters pertaining to [description of role].

Under the Freedom of Information Act I wish to know the following

information on [name of staff member]:

1. *All qualifications*
 2. *Age*
 3. *All experience from her CV*
 4. *Annual salary”.*
-
3. On 18 June 2010, the Council replied. It provided some information regarding the council officer's qualifications and it confirmed that the officer had been in her role for a number of years. It refused to provide any further information on the basis that it was exempt under section 40 of the FOIA.
 4. The complainant wrote to the Council again on 26 September 2010. He referred to a news article concerning a request for information by the BBC for the salaries of the 9,000 top public sector earners. He stated that information about public sector salaries is not personal data and he asked the Council to reconsider whether it can disclose the annual salary of the council officer.
 5. The Council replied on 27 September 2010. It stated that it had not been persuaded that it should disclose the salary of the council officer. It stated that the council officer was not as senior as the examples referred to and therefore could legitimately expect greater privacy. The Council also said that it considered that the request was both repeated and vexatious and it said that it would not be responding to any further requests on the matter.

The Investigation

Scope of the case

6. On 4 October 2010, the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider whether the Council had correctly refused to provide him with the salary of the council officer.

Chronology

7. The Commissioner wrote to the complainant on 3 March 2011 to set out his understanding of the complaint.

8. On the same day, the complainant replied and confirmed that the Commissioner's letter had accurately reflected the nature of his request and complaint to the Commissioner.
9. The next day, the Commissioner wrote to the Council to ask it to provide information to help him to consider the complaint.
10. The Council provided its response on 29 March 2011.
11. On 5 April 2011, the Commissioner wrote to the complainant. He explained that having considered the matter, his view was that the information was exempt under section 40(2) and he explained why. He invited the complainant to withdraw the complaint.
12. The complainant replied to the Commissioner on 10 April 2011. He confirmed that he was not willing to withdraw his complaint.

Analysis

Substantive Procedural Matters

Exemption

Section 40(2) – Third party personal data

13. This exemption provides that third party personal data is exempt from public disclosure if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act 1998 ("the DPA").

Is the information personal data?

14. Personal data is defined by the DPA as any information relating to a living and identifiable individual. In view of this, the salary of the council officer concerned is clearly her personal data.

Would disclosure be unfair?

15. The first Data Protection Principle basically provides that personal data shall be processed fairly and lawfully. In assessing fairness, the Commissioner will consider whether the disclosure would have been within the reasonable expectations of the individual concerned and what the consequences of making the disclosure could be. He will then balance these considerations against the legitimate public interest in the disclosure.

Reasonable expectations

16. Generally, the more senior a person is, the greater their expectations of transparency and accountability are. However, even senior individuals will have reasonable expectations that not all the information that is held about them will be made available to the public.
17. The Council has explained that the particular council officer concerned is not considered to be senior within the Council's structure. The Council explained that the individual concerned has no management or budget responsibility. The Council provided the details of the council officer's salary to the Commissioner and outlined her responsibilities. Having considered the explanation provided by the Council, the Commissioner accepts that the council officer would not have expected her precise salary to be disclosed to the public. Even if the council officer had been more senior, the Commissioner's published guidance makes it clear that disclosure of a precise salary is only likely to be warranted in exceptional circumstances. There were no such circumstances in this case.

Consequences of disclosure

18. As it is the Commissioner's view that it would not have been within the reasonable expectations of the council officer for her precise salary to be made public, he considers that the disclosure could be distressing to her.

Legitimate public interest

19. As explained in the Commissioner's published guidance¹, the Commissioner's view is that disclosure of precise salaries will only be justified in exceptional circumstances. Although he appreciates that there is a legitimate public interest in understanding how public money is being spent, in most cases this can be satisfied through the disclosure of a salary band rather than the precise salary. There is nothing in the circumstances of this case that suggests that there is a legitimate public interest in subjecting this particular council officer's personal data to an exceptional amount of scrutiny by disclosing her precise salary. The Commissioner therefore considers that the

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http://www.ico.gov.uk/for_organisations/freedom_of_information/information_request/~media/documents/library/Freedom_of_Information/Practical_application/SALARY_DISCLOSURE.ashx

disclosure of a precise salary to the public in these circumstances would be unwarranted and likely to cause distress. His view is that section 40(2) was engaged in this case and because of this, the Commissioner did not find it necessary to consider the application of section 14 to this request.

Procedural Requirements

20. As the Commissioner considers that the information was exempt under section 40(2), he finds that the Council acted in accordance with its obligations under the FOIA.

The Decision

21. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the FOIA because the information was exempt under section 40(2).

Steps Required

22. The Commissioner requires no steps to be taken.

Right of Appeal

23. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

24. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
25. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 16th day of May 2011

Signed

**Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides that -

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

Section 2(3) provides that –

“For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (f) in section 40 –
 - (i) subsection (1), and
 - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,

Vexatious or Repeated Requests

Section 14(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”

Section 14(2) provides that –

“Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with a previous request and the making of the current request.”

Personal information

Section 40(2) provides that –

“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) provides 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, 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.”