

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 February 2013

Public Authority: Middlesbrough Council
Address: Town Hall
Middlesbrough
TS1 9FX

Decision (including any steps ordered)

1. The complainant requested details of the financial package provided to the previous Chief Executive of Middlesbrough Council (the Council) upon his leaving the Council. The Council refused this request under the exemption provided by section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that the Council applied section 40(2) correctly and so it is not required to comply with the request.

Request and response

3. On 1 July 2012 the complainant wrote to the Council and requested information in the following terms:
*"(i) How much pay (with all associated costs) will the new Chief Executive be earning?
(ii) It has been stated that the new Chief Executive will be carrying on her current post, will anyone be promoted into this post (as 'acting Executive Director')?
(iii) What financial package did the last Chief Executive get when leaving his post?"*
4. The Council responded to requests (i) and (ii) on 6 July 2012 and to request (iii) on 19 July 2012. The information specified in requests (i) and (ii) was disclosed to the complainant. In response to request (iii) the Council cited the exemption provided by section 40(2) of the FOIA.

5. Following an internal review the Council wrote to the complainant on 28 August 2012. It stated that the refusal of request (iii) under section 40(2) was upheld.

Scope of the case

6. The complainant contacted the Commissioner on 29 August 2012 to complain about the refusal of request (iii). The complainant indicated at this stage that he did not agree that the exemption provided by section 40(2) was engaged.
7. The wording of the request seen by the ICO refers only to the last Chief Executive of the Council. However, some of the correspondence between the Council and the complainant refers to details relating to several of the previous Chief Executives.
8. On the basis that the wording of the request supplied to the Commissioner's office specifies only the last Chief Executive, the analysis in this notice concerns only the personal information of that individual. However, the complainant and the Council can take this analysis as providing an indication of the approach that the Commissioner would take in other cases where similar information is at issue.

Reasons for decision

Section 40

9. The Council has cited section 40(2), which provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. The task for the Commissioner here is twofold; first, it must be addressed whether the information constitutes the personal data of an individual other than the requester. Secondly, consideration must be given to whether disclosure of that personal data would be in breach of any of the data protection principles.
10. Turning first to whether the information requested in this case is the personal data of any individual aside from the complainant, the definition of personal data is given in section 1(1) of the Data Protection Act 1998 (DPA) as follows:

"personal data' means data which relate to a living individual who can be identified-

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller".

11. The view of the Commissioner is that the information in question here clearly constitutes the personal data of the individual specified in the request. The wording of the request means that any information falling within the scope of it would both relate to and identify that individual. This information does, therefore, constitute personal data as defined in section 1(1) of the DPA.
12. Turning to whether the disclosure of this personal data would be in breach of any data protection principle, the Commissioner has focussed on the first data protection principle, which requires that personal data be processed fairly and lawfully, and whether disclosure would be, in general, fair to the individual specified in the request. In forming a view on whether disclosure would be fair, the Commissioner has taken into account the reasonable expectations of the data subject, the consequences of disclosure upon the data subject and whether there is legitimate public interest in the disclosure of the information in question.
13. Covering first consequences to the data subject, the view of the Commissioner is that disclosure of the information would be likely to result in distress to the data subject. The Council has stated that this information is covered by a confidentiality agreement "*made under the provisions of the Employment Rights Act 1996*". The Council has stated that both it and the data subject are bound by this agreement. The view of the Commissioner is that disclosure in contravention of this agreement would be likely to cause distress to the data subject.
14. Turning to the reasonable expectations of the data subject, the view of the Commissioner is that it is clear that the confidentiality agreement means that the data subject will hold a strong expectation of confidentiality in relation to this information. It is also the case that in general an employee would expect that information relating to them that is held by their employer, or former employer, would be kept confidential, particularly where information relates to a financial arrangement.
15. On the issue of whether there is any legitimate public interest in the provision of this information, the Commissioner recognises that any financial package that was paid from Council funds would have meant

the expenditure of public money. Given this, the Commissioner also recognises that there is some legitimate public interest in this information. The Commissioner does not, however, believe that this public interest is of significant weight as it is likely that the sum of any public money in question would be, in public spending terms, minor.

16. In conclusion, the Commissioner has recognised a legitimate public interest in this information on the basis that this concerns the possible expenditure of public money. However, his view is also that it is likely that the data subject would suffer distress through the disclosure of the information and that this individual would hold a strong expectation of confidentiality in relation to any information on this subject matter. Given these factors, the Commissioner finds that the public interest in disclosure is outweighed and that it would be unfair and in breach of the first data protection principle to disclose this information.
17. Overall the Commissioner has found that compliance with the request would involve the disclosure of personal data and that this disclosure would be in breach of one of the data protection principles. The conclusion here is, therefore, that the exemption provided by section 40(2) of the FOIA is engaged and so the Council is not required to disclose the requested information.

Right of appeal

18. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

19. 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.
20. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Jon Manners
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF