

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 May 2013

Public Authority: Central Bedfordshire Council

Address: Priory House
Monks Walk
Chicksands
Shefford
Bedfordshire
SG17 5TQ

Decision (including any steps ordered)

1. The complainant has requested information regarding the local government pensions received by councillors. Central Bedfordshire Council (the council) refused to provide this information as it considered that it was personal data and therefore exempt under section 40(2) of the FOIA.
2. The Commissioner's decision is that the council was correct to rely on section 40(2) to withhold the requested information. He does not require the council to take any steps.

Request and response

3. On 28 May 2012, the complainant wrote to the council and made the following request for information:

"Under the Freedom of information Act, would you please provide me with the following information?

1. *The individual names of all Central Beds councillors who are claiming pension contributions from CBC? "**From the public purse**"*
2. *The amount of money that is being claimed individually, and by whom?*
3. *The total amount that has been claimed, for the period of 2009\2012*
4. *The annually costing of these contributions."*

4. The council responded on 27 June 2012. It refused to provide the requested information, citing the exemption at section 40 as it considered that the information was personal data.
5. Following an internal review the council wrote to the complainant on 1 August 2012. It maintained its position with regard to points 1 and 2 stating that it still considered that the information was exempt under section 40(2) as it was personal data. However, with regard to points 3 and 4, the council disclosed the requested information.

Scope of the case

6. The complainant contacted the Commissioner on 2 August 2012 to complain about the way his request for information had been handled.
7. When the council was first made aware of the complaint it contacted the councillors who were members of the pension scheme to ask if they consented to the disclosure of their information. At this time, around half of the councillors gave their consent, some refused and some did not respond. During the course of the investigation the council again sought the consent of the councillors who were current members. At this point, some councillors withdrew their consent meaning that less than half of the councillors who were members of the scheme consented to the disclosure of their information. The council then disclosed to the complainant the pension information relating to the councillors who consented to its release. This information is therefore not within the scope of this decision notice.
8. The Commissioner considers the scope of the case to be to determine whether the council was entitled to rely on section 40 to withhold the remaining information requested at points 1 and 2.

Reasons for decision

Section 40(2)

9. 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."*

10. 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"

Is the information 'personal data'?

11. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the Data Protection Act 1998 (the DPA). In this instance, the Commissioner accepts that information regarding the details of an individual's pension is personal data relating to them as defined by the DPA.

Does the disclosure of the information contravene any data protection principles?

12. The council has argued that disclosing the names of those councillors who have not provided their consent for the disclosure of their pension information would breach the first data protection principle. This states that:

"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".

13. In deciding whether disclosure of personal data would be unfair the Commissioner has taken into account the following factors:

- The individual's reasonable expectation of what would happen to their personal data.
- The seniority of the individual's position at the council.
- The damage or distress the individual would suffer if the information was disclosed.
- The legitimate interests of the public in knowing about the expenditure of public money on councillors pensions.

Reasonable expectations

14. The council considers that it is not within the reasonable expectations of the councillors for information about their decision to take a pension and the amount the council contributes to their personal pension to be disclosed to the world at large. The council has referred to the Local Authorities (Members Allowances) (England) Regulations 2003 which outlines what information local authorities should publicise regarding councillors' allowances. Section 11 of these regulations state that a councillor is entitled to claim a local government pension and section 16 sets out the information to be disclosed. The council has argued that as the regulations make no reference to the disclosure of councillors' pension entitlement, the councillors would not have a reasonable expectation for such information to be published.
15. The council has stated that the local government transparency regulations do not require that any additional monies paid to councillors from public money, such as pensions, are published, and that this again will shape the reasonable expectations of individuals. The council has also explained that councillors were not informed that information about their decision to take a pension, or the amount of the pension would be published.
16. Further to this, the Commissioner recognises that the value of a person's pension is personal financial information about them and in some cases their partner or family. He also notes that disclosing information about a person's pension choices discloses information about the way in which they are preparing for their and their family's future. Therefore he considers that individuals will have a reasonable expectation that information about their pension, and their decision whether or not to take one, will not be routinely disclosed.

Seniority

17. The Commissioner considers that public sector employees should expect some information about their roles and the decisions they take to be disclosed under the FOIA. The Commissioner also believes that a distinction can be drawn about the levels of information which junior staff should expect to have disclosed about them compared to what information senior staff should expect to have disclosed about them. This is because the more senior a member of staff the more likely it is that they will be responsible for making influential policy or expenditure decisions.
18. The Commissioner's general approach is that public sector employees should expect some details about their salary and their role to be placed in the public domain. However, it is reasonable to assume that they

would not expect details of their personal pension to be disclosed. Disclosure of such information would clearly lead to a greater infringement into the privacy of individuals as it would reveal specific details about what are clearly personal matters.

19. The Commissioner considers that whilst councillors are not employees and do not have a specific rank within a local council like a chief executive, they are elected representatives of the local community and as such they are in a position of responsibility. They make decisions on behalf of the electorate and often work alongside senior council officers in policy and expenditure decisions. The Commissioner also notes that information about individual councillors is readily available online and often includes their home address and contact details.
20. The council has acknowledged that due to the roles of councillors, information about their pension is inherently about both their personal and their professional lives. However, The Commissioner considers that even though the individuals are effectively senior representatives of the council, their expectations of privacy with regard to their pensions are still objectively reasonable as it relates far more to their private lives than their professional lives.

What damage or distress would the individual suffer if the information was disclosed?

21. The Commissioner recognises that the release of the information would be an intrusion into the personal financial circumstances of the individuals in question. Therefore, the Commissioner believes it more than probable that disclosure would cause some distress to the individuals concerned.

Legitimate interests of the public

22. Although the exemption contained in section 40(2) if found to be engaged is absolute and therefore not subject to the public interest test, the Commissioner will still consider legitimate interests in favour of disclosure.
23. In considering the legitimate interests of the public, the Commissioner recognises that the payment by the council into councillors' pensions means the expenditure of public money. Therefore he recognises that there is some legitimate public interest in this information. However, the Commissioner does not believe that this public interest is of significant weight as it is likely that the sum of any public money in question would be minor in public spending terms.
24. The complainant believes that the public interest in the information is strong because he considers that councillors are not employees of the

council, but are volunteers and therefore they should not be entitled to a pension. He has stated that it is not in the public interest to allow councillors to hide behind the DPA.

25. The Commissioner acknowledges that there is some legitimate public interest in knowing the requested information. However, as referred to in paragraph 14, it is clear that councillors are entitled to claim a pension, and so those that choose to do so are not acting unlawfully. Further to this, the Commissioner notes that the council has disclosed the amount it has spent in total on the pensions of councillors for each of the last three financial years. He therefore considers that the public interest in the council's expenditure on the pensions of councillors has been served to a large extent.
26. As some information about the council's expenditure on the pensions of its councillors is in the public domain, and because information about the detail of an individual's pension is inherently personal, the Commissioner considers that the legitimate public interest in disclosure is outweighed by the councillors' rights to privacy.

Conclusion

27. The Commissioner therefore considers that, allowing for the personal nature of the requested information, its disclosure would be disproportionate in view of the rights of the councillors to privacy.
28. In light of the arguments presented above, the Commissioner has concluded that it would not be fair to disclose the requested information, and therefore that the council was correct to rely on section 40(2) to withhold it.

Right of appeal

29. 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

30. 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.
31. 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

Andrew White
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