

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 September 2014

Public Authority: Wirral Metropolitan Borough Council

Address: Wallasey Town Hall
Brighton Street
Wallasey
Wirral
CH44 8ED

Decision (including any steps ordered)

1. The complainant has requested information from Wirral Metropolitan Borough Council ("the council") about payments made to council officers on salaries above £50,000 who have left the council's employment from 2006 to 2012. The council disclosed some information, but withheld the remainder under the exemption provided by section 40(2) of the Freedom of Information Act ("the FOIA").
2. The Commissioner's decision is that section 40(2) is engaged, and that the council was correct to withhold the information. However, in failing to provide its response within the time for compliance, the council has breached the requirement of section 10(1). In failing to issue a refusal notice within the same time for compliance it has also breached section 17(1).
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 17 April 2013, the complainant wrote to the council and requested the information as part of a larger piece of correspondence, which is provided in full here:

"Please follow this link to the council's website:

<http://democracy.wirral.gov.uk/documents...>

Here, you will find details of a September 2012 document written by then Chief Internal Auditor [redacted name].

Within it, in the table at Appendix One, [redacted name] highlights the subject of "compromise agreements", explaining, quite worryingly, how these sensitive documents were not being recorded correctly or reported publicly, and how he discovered...

"...a high priority fundamental risk."

In light of the difficulty caused by this, please explain how you managed to respond properly with 'accurate' figures for the following two historical requests:

<https://www.whatdotheyknow.com/request/t...>

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Currently, given that both requests took a combined total of 15 months to respond to, I have made the working assumption that you cannot have reached an accurate figure for compromise agreements drawn up in dispute circumstances for either of the above requests.

I would now like to suggest that you query your Accounts Department please, and look for suspiciously large public money payments that have been made to persons departing in controversial circumstances.

In the case of persons paid more than £50,000 per annum, you are required by Audit Commission rules to provide the amount of the pay off, and their job position. In the case of persons paid more than £150,000 you are required to provide the amount of the pay off, their name and job position. Please provide these extra details to me.

Once you have the required details, you can then collate the figures, compare them with the current total of 24 (reported between years 2006 thru 2012), add the extra cases to this total and provide the updated accurate figure to me."

5. The council responded on 22 April 2013 and refused the request citing 14(1), which it subsequently upheld in an internal review on 29 May 2013.

Scope of the case

6. The complainant contacted the Commissioner on 12 October 2013 to contest the council's response.
7. The Commissioner wrote the council on 10 February 2014 to request that it provide supporting evidence for its refusal of the complainant's request, or else provide a revised response to the complainant and the Commissioner, by no later than 10 March 2014.
8. Following a delay, the council submitted its revised response to the complainant and the Commissioner on 24 June 2014. The council withdrew reliance on section 14(1), and disclosed some information whilst withholding the remainder under section 40(2).
9. The council has advised the complainant that elements of the request are not valid requests for recorded information under the terms of the FOIA, due to being requests for explanations, or else for calculations to be carried out by the council with existing recorded information. The Commissioner can only issue a decision that relates to valid requests for information, as defined by section 8. This decision only addresses what the council and the Commissioner have identified to be a valid request under the terms of the FOIA, namely:

"In the case of persons paid more than £50,000 per annum, you are required by Audit Commission rules to provide the amount of the pay off, and their job position. In the case of persons paid more than £150,000 you are required to provide the amount of the pay off, their name and job position. Please provide these extra details to me."

In relation to the above request, the council has confirmed within its revised response that there are no council officers on salaries greater than £150,000, and that the council therefore holds no recorded information in relation to this.

10. The Commissioner has reviewed the information contained within the council's revised response, and considers that it contains enough contextual evidence for him to reach a determination on whether the council has correctly applied the exemption provided by section 40(2).

Reasons for decision

Section 40(2) – Third party personal data

11. 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..."*

Is the withheld information personal data?

12. Personal data is defined by section 1 of the Data Protection Act 1998 ("the DPA") as:

"...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, and includes any expression of opinion about the individual and any indication of the data controller or any person in respect of the individual..."*

13. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA. In this instance the Commissioner has considered the nature of the information

that has been withheld, and perceives that it constitutes the job titles and termination payments of senior council officers. The Commissioner considers that it is highly likely that there is public awareness of the identities of these officers, particularly by other council employees. As a result of this, the job titles and termination payments are highly likely to become personal data through being directly identifiable as relating to those individuals.

Would disclosure breach the data protection principles?

14. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
15. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations of the data subject

16. When considering whether a disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
17. In this case the council has confirmed that the withheld information derives from before the implementation of the Accounts and Audit (England) Regulations 2011 ("the 2011 regulations"). Regulation 7 of that legislation requires a public authority to publish the termination payments made to council officers on salaries greater than £50,000, along with the council officer's job title. The council has therefore proposed that prior to the 2011 regulations being implemented such individuals would have held a reasonable expectation of that information remaining confidential. Additionally, the council has confirmed that the information relates to individuals who all departed the council's employment with compromise agreements, the confidentiality of which would have increased the individual's expectation of privacy.

The consequences of disclosure

18. The council has proposed that the disclosure of the information would have an unjustified adverse effect on the individuals to whom it relates. The council considers that this effect would be compounded as the individuals are no longer being employed by the council, and as such would expect a higher level of privacy in respect of their personal data.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

19. The council has not advised the Commissioner of any legitimate interests in disclosure that it has identified. However, the Commissioner considers that the need to promote transparency and accountability on the part of the council, and particularly in relation to the use of public monies, to be a legitimate argument for the fairness of disclosure.

Conclusion

20. There is always some legitimate public interest in the disclosure of any information held by public authorities. This is because disclosure of information helps to promote transparency and accountability amongst public authorities. This in turn may assist members of the public in understanding decisions taken by public authorities and perhaps even to participate more in decision-making processes.
21. In the circumstances of this case the Commissioner's conclusion is that the disclosure of the requested information would not be fair. This is because while the disclosure of such information has been required by law since the 2011 regulations, it is highly likely that council officers who received termination payments (as part of a compromise agreement) before this date would hold a strong expectation that their personal data would remain confidential.
22. The Commissioner has therefore concluded that disclosing the information would not be fair under the first principle of the DPA, and that the exemption provided by section 40(2) is engaged.

Section 10(1) and Section 17(1) – Time for compliance

23. Section 10(1) requires that a public authority must respond to a request within the time for compliance, which is 20 working days following the date of receipt. Section 17(1) requires that a notice refusing a request must be provided within the same timescale.
24. In this case the Commissioner has identified that the council responded outside 20 working days, and therefore breached the requirements of section 10(1) and section 17(1).

Right of appeal

25. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. 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.
27. 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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