

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 13 January 2015

**Public Authority:** Wirral Metropolitan Borough Council

**Address:** Municipal Building  
Cleveland Street  
Birkenhead  
Merseyside  
CH41 6BU

#### **Decision (including any steps ordered)**

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1. The complainant has requested the names of employees who authorised invoices in relation to certain contracts as well as details of the development work undertaken. Wirral Borough Council refused to disclose the identities of the individuals on the basis of section 40(2) but provided a description of the development work that had been done.
2. The Commissioner's decision is that section 40(2) has been correctly applied to refuse to identify the employees who authorised the invoices and the description provided was sufficient to satisfy the request. He does not require the Council to take any steps.

#### **Request and response**

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3. On 10 April 2014 the complainant wrote to Wirral Borough Council "the Council") and requested information relating to a number of contracts. The complainant asked:

*"1935 30/09/2009 2009 Neighbourhood Renewal Team WIRRALBIZPLUS  
- SEPTEMBER Development work for September development 900 - 1*

*1935 30/09/2009 2009 Neighbourhood Renewal Team WIRRALBIZPLUS  
- SEPTEMBER Development work for September development 1800-*

*1897 10/09/2009 2009 Neighbourhood Renewal Team Development Work for August 9 Full days @ £300 development 2700 -1*

*1897 10/09/2009 2009 Neighbourhood Renewal Team Development Work for August 4 Half Days @ £150 development 600 -1*

*1868 05/08/2009 2009 Neighbourhood Renewal Team Development work July6 Half Days @ £150.00 development 900*

*1868 05/08/2009 2009 Neighbourhood Renewal Team 8 Full days @ £300 development 2400*

*1820 20/07/2009 2009 Neighbourhood Renewal Team Wirralbiz development work June6 Full Days5 Half Days development 2550*

*1737 11/05/2009 2009 Neighbourhood Renewal Team wirralbizplus Development work – enhancing client services via development 4800*

*The above invoices were rendered to WBC at late summer 2009. They represented work done by one particular subcontractor of wirralbiz. The face of these invoices refer to Development work but with no further detail.*

*Counter fraud has already summoned up these invoices from your data silo in the last weeks . However although a promise has been made to inform me of the details, nothing has been forthcoming.*

*I ask you to describe:*

- 1. who authorised the payment of the above invoices*
- 2. what development work was done? For example was it preparing a bid for the ISUS contract (granted August 2009) or was it for some other purpose?"*
4. The Council responded on 8 May 2014. It stated that it could not provide the names of the individuals who authorised the invoices as it was exempt on the basis of section 40(2) of the FOIA. For the second part of the request the Council explained that the development work was to provide an enhanced business start programme in the Council's most deprived wards. It further explained this work involved six additional counselling/mentoring sessions and a discretionary business start grant for each business starter.
5. The complainant responded on 8 May 2014 and disputed the accuracy of the response given to the second part of the request. The complainant therefore asked for an internal review. On 2 June 2014 the complainant again wrote to the Council to state that the second part of the request

could be answered by providing the cost code of the invoices with a narrative of what they mean. The complainant then wrote to the Council again on 25 June 2014 to ask for an internal review, particularly in respect of the second part of the request.

6. No response to the request for an internal review was received.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 29 July 2014 to complain about the way his request for information had been handled. He particularly highlighted his belief that the response from the Council regarding the invoices was untrue.
8. The Commissioner wrote to the complainant and set out that the scope of his investigation would be to determine if the section 40(2) exemption has been correctly applied. As the complainant appears to be more concerned with the responses provided to the second part of the request, the Commissioner also wrote to the Council about this but cannot comment in detail on issues about the accuracy of the information provided.

## **Reasons for decision**

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### **Part 1 of the request**

9. Section 40(2) of the FOIA provides that information which is the personal data of a third party is exempt if a disclosure of the information would breach any of the data protection principles.
10. The first question which the Commissioner has considered is whether the information is personal data for the purposes of the Data Protection Act 1998 (DPA). Personal data is defined in 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."*
11. In this case the information withheld is the identity of the individual(s) who were authorised to make payments under the Working Neighbourhood Funding Scheme. This information clearly identifies

individual(s) and the Commissioner accepts that it is personal data as defined by the DPA.

12. Having determined that the information is personal data, the next question which the Commissioner must consider is whether a disclosure of that information would breach any of the data protection principles.
13. The most relevant data protection principle in this case would be the first data protection principle. This requires that information is processed 'fairly and lawfully'. The Commissioner must therefore decide whether a disclosure of the information would be 'fair'.
14. In considering whether disclosure would be fair the Commissioner takes into account the following factors:
  - Whether disclosure would cause any unnecessary or unjustified damage or distress to the individual concerned;
  - The individual's reasonable expectations of what would happen to their information; and
  - Balancing the rights and freedoms of the data subject with legitimate interests.
15. The Commissioner has considered the information redacted under section 40(2) and the fact that the individual(s) would have had no reasonable expectation that their name and role in authorising these invoices would be made publicly available.
16. The Commissioner's view is that when considering what information individuals should expect to have disclosed about them a distinction should be drawn as to whether the information relates to the individual's public or private life. In this case the information relates to the individual(s) public life and so the expectation of privacy is not as high but the Commissioner still accepts that the seniority and responsibility of the role the individual(s) holds in the public authority will be factor.
17. The Commissioner's guidance on requests for personal data of employees<sup>1</sup> makes clear that the expectation to make public information relating to employees is lessened if the individual(s) has a more junior role within the organisation. The Council has argued the individual(s) in

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1187/section\\_40\\_requests\\_for\\_personal\\_data\\_about\\_employees.pdf](https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf)

this case did not hold a senior role and would not have had any responsibilities which would provide an expectation of disclosure or a legitimate interest in disclosure.

18. The Commissioner has next gone on to consider whether the release of the information would cause unnecessary or unjustified harm to the individual(s) involved. The Council has not expanded on its reasoning for considering that disclosure of the information would be distressing but the Commissioner does acknowledge that the disclosure of any personal information contrary to the expectation it would not be disclosed may be in some ways distressing to individuals although this is only a remote possibility.
19. In relation to the final factor, the legitimate interest in the public knowing this information, the Commissioner does not consider there is any public interest in the release of this information as knowing the identity of the individual(s) would not provide any insight into the situation or contribute towards any debate on the matter. The Commissioner acknowledges that usually disclosure of information will increase transparency and accountability.
20. In making his decision the Commissioner has considered whether disclosure of the information would lead to a greater infringement of the individual(s) legitimate right to privacy than is outweighed by the legitimate interest in disclosure. The Commissioner has not been convinced there is any legitimate public interest in disclosure of the individual(s) identity beyond simply increasing transparency within the public authority. However as this would be unlikely to provide any additional insight into the situation the arguments for increased transparency are limited in this case.
21. Balanced against this the Commissioner does accept there is a possibility that disclosure of this information may cause unwarranted damage or distress, albeit the likelihood of this is remote.
22. The Commissioner therefore considers that disclosure of the identity of the individual(s) would be unfair and in breach of the first data protection principle. As such, section 40(2) is engaged and the information is therefore exempt from disclosure.

## **Part 2 of the request**

23. In the second part of the request the complainant asked the Council what development work was done. The Council provided a brief description of this work which the complainant did not believe accurately represented the situation.

24. The Commissioner wrote to the Council to ask for some further explanations on this point. In its response the Council explained that the description of the work carried out that was provided to the complainant when responding originally to the request was correct and answered this part of the request.
25. With regard to the complainant's suggestion that the Council could have provided the cost code of the invoices with a narrative of what they meant; the Council has argued that supplying this information would engage an additional exemption but this has not been fully considered as it would go beyond the scope of the request.
26. The Commissioner has considered the arguments presented by both parties in this case and is not in a position to comment on whether the response from the Council is accurate but can only make a determination on whether it satisfies the request.
27. The complainant asked the Council what development work had been done. The request was phrased as a question and did not specify specific documents that may contain the information or ask for relevant correspondence or plans. As such the Council answered the question, providing a brief description of the development work done.
28. The Commissioner is of the view that providing the cost code of the invoices with a narrative would be going beyond the scope of the request and he does not therefore consider that this would have been reasonable. He therefore has concluded that the description provided by the Council in response to the complainant was sufficient to satisfy this part of the request when considering the wording and scope of the request.

## Right of appeal

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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: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

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 .....**

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