

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

### **Decision notice**

**Date:** 11 February 2015

**Public Authority:** Ceredigion County Council  
**Address:** Penmorfa  
Aberaeron  
SA46 0PA

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

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1. The complainant requested information about a particular officer who was responsible for advising that measures taken by a particular developer to prevent flood damage were adequate. Ceredigion County Council ('the Council') withheld the information requested under section 40(2) of the FOIA. The Commissioner's decision is that the Council correctly applied section 40(2) to the information it holds relevant to the request. The Commissioner does not require any steps to be taken.

#### **Request and response**

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2. On 3 January 2014 the complainant wrote to the Council and requested information in the following terms:

"I am, therefore, making the following request under the Freedom of Information Act, in order to facilitate the lodging of the complaint against the appropriate person:

The full name of the Council technical officer responsible for advising the Council that the measures taken by the Dol-y-Dintir developer to prevent flood damage are adequate, the professional body of which they are a member, their level of membership, their date of entry to that level of membership and their membership/roll number of that body. In the event that the person responsible for the advice is not professionally qualified/a member of the relevant professional body, then I request the same information for the professionally qualified person within the Council who is responsible for the professional & technical oversight and supervision of the advising technical officer's work".

3. The Council responded on 28 March 2014 and stated that the information requested was exempt under section 40(2) of the FOIA.
4. On 27 May 2014 the complainant requested an internal review of the Council's refusal to disclose the information requested.
5. The Council provided the outcome of its internal review on 1 July 2014 and upheld its decision that the information requested was exempt under section 40(2) of the FOIA.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 17 October 2014 to complain about the way his request for information had been handled.
7. During the course of the Commissioner's investigation, the Council confirmed that it did not hold any information in relation to the date of entry of membership to any professional body or any membership/roll number.
8. The scope of the Commissioner's investigation into this complaint is, therefore, to determine whether the Council should disclose the information it does hold relevant to the request or whether it was correct in relying on section 40(2) of the FOIA.

### **Reasons for decision**

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#### **Section 40 – the exemption for personal data**

9. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').
10. The Council considers that the information requested constitutes the personal data of the individual concerned and that disclosure would breach the first data protection principle.

#### **Is the requested information personal data?**

11. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by section 1 of the DPA. It defines personal information as data which relates to a living individual who can be identified:

- from that data,
  - or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
12. In considering whether the information requested is “personal data”, the Commissioner has taken into account his own guidance on the issue<sup>1</sup>. The two main elements of personal data are that the information must “relate to” a living person, and that person must be identifiable. Information will “relate to” a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts them in any way.
13. The withheld information in this case comprises the name of a particular Council officer and other information relating to their professional qualifications/membership of any professional body. The withheld information clearly comprises data which relates to the individual concerned as it represents biographical information about them. The Commissioner therefore accepts that the information in the context of this request is personal data as defined by the DPA.

### **Would disclosure breach one of the data protection principles?**

14. Having accepted that the information requested constitutes the personal data of a living individual other than the applicant, the Commissioner must next consider whether disclosure would breach one of the data protection principles. He considers the first data protection principle to be most relevant in this case. The first data protection principle has two components:
- personal data shall be processed fairly and lawfully; and
  - personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

### **Would disclosure be fair?**

15. In considering whether disclosure of the information requested would comply with the first data protection principle, the Commissioner has first considered whether disclosure would be fair. In assessing fairness,

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[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Data\\_Protection/Detailed\\_specialist\\_guides/PERSONAL\\_DATA\\_FLOWCHART\\_V1\\_WITH\\_PREFACE001.ashx](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Data_Protection/Detailed_specialist_guides/PERSONAL_DATA_FLOWCHART_V1_WITH_PREFACE001.ashx)

the Commissioner has considered the reasonable expectations of the individual concerned, the nature of those expectations and the consequences of disclosure to the individual. He has then balanced against these the general principles of accountability, transparency as well as any legitimate interests which arise from the specific circumstances of the case.

16. The Council provided the Commissioner with some background information about the subject matter of the request in this case. The Council explained that the request relates to a planning application at Dol-y-Dintir, and in particular the flood prevention measures approved in relation to that application. Decisions regarding the measures required (attenuation and discharge rates) were taken during the consultation and assessment of the two relevant planning applications. Both applications were approved subject to conditions, including conditions stipulating the attenuation and discharge rates and a requirement for a comprehensive drainage plan.
17. The Council advised that the attenuation and discharge rates were provided by the Environment Agency Wales ('EAW') (now Natural Resources Wales). Therefore, no Council officers assessed the issue or approved the comprehensive and integrated drainage plan. The only function which the officer who is the subject of this request performed was to advise the Planning Section of the Council that the developer's proposals conformed to the recommendations put forward by EAW.
18. The Council stated that the officer's membership of any professional body is information which was disclosed to the Council during the job application process. In light of this, the Council contends that the individual would have had an expectation that the information would be treated as confidential, used only for the recruitment process and would not be disclosed into the public domain.
19. The Council informed both the complainant and the Commissioner that membership of any professional body was not a requirement of employment to the post in question, and therefore considers such membership is "a matter of personal choice rather than employment necessity and not a matter which is in the public domain". The Council also advised the complainant that it is satisfied the individual in question is suitably qualified and experienced to carry out the post in which they are employed.
20. The Council confirmed that the individual concerned is not a head of service, and therefore not considered a senior officer. The officer has a limited public facing role, being required to deputise for their section head at certain public events. The officer also has limited budgetary responsibilities and any order forms or invoice payments need to be

signed off by more senior officers. The officer is also not responsible for making decisions which would have a major impact on service provision, the public or other organisations.

21. In terms of the consequences of disclosure, the Council accepts that it does not seem likely that the officer would be subject to any physical harm. However, in an email to the Council, the complainant confirmed that he intended to "make a complaint of competence regarding the individual decision maker, or his/her appropriately qualified professionally qualified professional & technical supervisor/overseer if he/she is not fully professionally qualified, under the relevant professional body's code of professional conduct". Whilst the Council does not believe that any such complaint would be upheld, it believes that any complaint would cause unnecessary distress to the officer concerned. The Council also understands that any claim of negligence/competence would sit on the individual's file with any professional organisation and could therefore lead to reputational damage.
22. The Council accepts that there is a legitimate interest in the public being able to trust the advice of Council officers; however, it does not believe that it is necessary to know details of an officer's membership of any professional body, particularly when, as in this case, such membership is not a requirement of the post. The Council considers that standard employment checks and an assurance that an officer met the minimum requirements needed for a post and is suitably qualified for their post should be adequate assurance to satisfy any legitimate interest of the public. It is of the view that disclosure of information about an officer's membership of any professional body is not necessary to meet any legitimate interest.
23. The Council advised the Commissioner that, as part of his or her email signature, the officer does include limited information about their professional qualifications/membership. However, the Council explained that the information did not specify their area of expertise within the qualifications nor indicate their level of membership within any professional body.
24. In general, the Commissioner considers that while senior officers would be likely to have a greater expectation that their personal data would be disclosed, more junior officials would have a greater expectation of privacy, with their names not being disclosed to the public at large. The Commissioner notes that the withheld information relates to an individual who occupies a post which is not considered to be a senior position within the Council. He also notes that the individual occupied a position with a limited public facing role, and limited responsibility for the policy decisions and expenditure of public money. The Commissioner

has also taken into account the information was provided to the Council during the job application process and the individual has refused consent to disclosure. The Commissioner agrees that the officer would have had a clear expectation that details of their qualifications and membership to any professional body would not be disclosed and he accepts that such an expectation is a reasonable one.

25. The Commissioner notes the Council's comments in paragraph 21 of this notice about the consequences of disclosure in this case. In light of this and the reasonable expectations of confidentiality described above, the Commissioner accepts that disclosure of the information requested into the public domain would give rise to an unfair and unwarranted intrusion on the individual's privacy in the circumstances of this case, and has the potential to cause unnecessary and unjustified harm to the individual.
26. The Commissioner believes there is a legitimate public interest in disclosure of information which would promote accountability and transparency in the spending of public money. In particular, the Commissioner believes there is a legitimate interest in knowing that staff are suitably qualified to perform their roles. The Commissioner notes that membership of any professional body or attaining a specific professional qualification were not requirements of the position when the individual was appointed. The Commissioner also notes that the Council has advised the complainant that it is satisfied that the individual is suitably qualified and experienced to carry out their role. It can therefore be assumed that in securing employment the member of staff has met any relevant criteria for the position, without the need for disclosure of any further information, for example their actual qualifications. The Commissioner does not consider there is any compelling legitimate interest in disclosure of the requested information. Whilst the Commissioner agrees it is important for members of the public to be able to trust the advice they receive from Council officers he does not believe that it is necessary for information about any membership to any professional body to be published, in order to have faith in their advice.
27. Taking account of all the circumstances of this case, the Commissioner is satisfied that disclosure of the information requested would be unfair and unnecessary in the circumstances, and any legitimate interest of the public does not outweigh the individual's expectations on how their personal data would be processed and any consequences of disclosure. Therefore the Commissioner is satisfied that the Council has correctly relied on section 40(2) of the FOIA to withhold the information in this case.

## Right of appeal

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28. 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)

29. 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.
30. 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 .....**

**Anne Jones**  
**Assistant Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**