

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 July 2015

Public Authority: Essex County Council
Address: County Hall
Market Road
Chelmsford
CM1 1QH

Decision (including any steps ordered)

1. The complainant has requested copies of Lord Hanningfield's credit card transaction logs between certain dates. Essex County Council (the council) provided the complainant with a link to the redacted logs relying on section 21 of the FOIA to provide the link and 40(2) for the redactions of named individuals on the logs. During the Commissioner's investigation the council released the information that identified its Chief Executive and Assistant Chief Executive along with some information it no longer considered to be personal data.
2. The complainant was not satisfied with the redaction of the names, senior members/ officers in particular and also considered that the council should provide him with copies of the actual credit card logs, not a link to the online version. During the Commissioner's investigation, the complainant and council reached a compromise with regards to providing copies of the original transaction logs but a decision was still needed to determine whether the council could rely on section 40(2) of the FOIA to redact them.
3. The Commissioner's decision is that the council has correctly relied on section 40(2) of the FOIA to make the redactions it has.
4. The Commissioner does not require the council to take any steps.

Request and response

5. On 5 August 2014, the complainant wrote to the council and requested the following information with regards credit card payments relating to Lord Hanningfield for the period from March 2005 to March 2010:

"Please provide copies of the original credit card logs in whatever form they are currently held. If redaction is necessary, please ensure that the names of senior officers (current and former), elected members, other elected representatives (e.g. MPs) and senior officers from other publicly-funded bodies are not redacted. NB: I would appreciate it if this question could be treated as a press request, but if that isn't possible then please treat it as an FOI."

6. The council responded on 20 August 2014. It advised that the information was available from the following link: [paragraph 5.1 of the Review of ECC Governance Arrangements](#).
7. The council stated that the information published online does not include names as they were redacted at the time of the publication and are exempt under section 40(2) of the FOIA.
8. The complainant requested an internal review on the 26 November 2014 setting out his reasons why he considers the names of senior public officials should be provided, but considered that junior officers and members of the public may have more of an expectation that their information would be withheld. He asked the council to release the information as requested, in its original format.
9. The council provided the outcome of its review on the 3 October 2014. It upheld its decision to maintain the redaction of names under section 40(2) of the FOIA. It also considered that section 21 was engaged – information held reasonably accessible to the applicant by another means – as it provided the complainant with a link to the information, rather than emailing it to him directly.

Scope of the case

10. The complainant contacted the Commissioner on 10 November 2014 to complain about the way his request for information had been handled. He is not satisfied that the council has redacted the names under section 40(2) of the FOIA and also that the council has not provided the credit card logs in its original format.

11. During the Commissioner's investigations, the council informed him that it had now released some of the previously redacted information. As well as releasing information to the complainant where its Chief Executive is named (a copy of which was provided to the Commissioner as 'Annex 1'), it provided an 'additional list 1' - transactions on the credit card log without the previous redactions as they were no longer considered to include personal data and where individuals are now deceased, and an 'additional list 2' - identifying the council's Assistant Chief Executive following consent being given to disclose.
12. Also with regards to the council relying on section 21 not to provide the original credit card logs, following the recent Court of Appeal decision for The Independent Parliamentary Standards Authority (IPSA)¹, the Commissioner asked whether it wanted to reconsider its position for refusing the original credit card logs under section 21 of the FOIA.
13. The council on review of this decision amended its reliance of section 21 but stated that section 14 of the FOIA would be engaged, because it determined that the time it would take the council to redact the information would make this a vexatious request. Also to provide the original logs it considered section 31 of the FOIA was engaged with regards to Lord Hanningfield's signatures on these logs.
14. The complainant has advised that he does not need to see the signatures so confirmed that that these can be redacted and as way of a compromise would reduce the part of his request for a copy of the original logs, so that the council would not have to provide all of the transaction logs. He would reduce it to just a 6 month period in 2008. The council and complainant are treating this compromise as a refined request and therefore a new request, which will be dealt with separately to this decision notice.
15. The Commissioner considers the scope of this case is to determine whether the council was correct to redact the remaining names on the transaction logs under section 40(2) of the FOIA, other than what has already been disclosed.

¹ <http://www.bailii.org/ew/cases/EWCA/Civ/2015/388.html>

Background

16. The council has provided some background information, which the Commissioner considers will add context to the decision notice, the way the credit cards were used and payments recorded, and the background to Lord Hanningfield.

Credit card logs

17. The council has told the Commissioner that it issued a number of credit cards and was liable for the money spent on them. The cards were there to provide a convenient and low cost way of paying for goods and services.
18. One of these cards was issued to Lord Hanningfield, who was the leader of the council at the time, to use to pay for goods and services he received but it was also used as a convenient way to pay for goods and services required by and for other people.
19. The council would receive monthly credit card statements for each card and every month a 'credit card transaction log' was completed for each card. This log provided some explanation for the expenditures, but the key purpose of the log was to enable the expenditure to be correctly coded for accounting purposes.
20. Lord Hanningfield's card log was compiled by council administrative staff based in his office. The information was supplied by Lord Hanningfield, or by asking other people. The council advises that there was not a universal practice about what information was recorded on the logs, but the transactions sometimes recorded names or a description of a person other than Lord Hanningfield.
21. Sometimes the council was able to identify an individual from the description but other times not. The council has stated that it is unclear as to what the inclusion of a name was intended to denote. It accepts that it is possible this would mean that those named were present with Lord Hanningfield on a particular occasion, but other times it was not likely they were present when the expenditure was incurred. So it cannot say, for most occasions, whether or not a named individual would have received a benefit from the expenditure incurred.
22. The council, in most cases, state that it is not clear if those named actually received anything at the public's expense, or whether they participated in the hospitality as their employer may have paid. It also states that it is unclear whether the named person would have known that the expenditure from which they may have benefitted was being funded by the council.

23. The information recorded in the transaction logs by the administrative staff, who were almost invariably not present when the transactions were made, relied upon what they could obtain from Lord Hanningfield or the others who may have been present. The credit card logs in question are from March 2005 to March 2010.

Lord Hanningfield

24. The council has told the Commissioner that Lord Hanningfield was elected leader of the council in 2000 and resigned in 2010. The main reason for this resignation being that he was charged with criminal offences relating to his claim for Parliamentary expenses at the House of Lords. He remained a member of the council until July 2011 when he was convicted and sentenced to imprisonment. He was also ordered to repay the House authorities and his appeal was unsuccessful.
25. The council has explained that his sentence disqualified him from holding office as a councillor and he was expelled from the House until 2012.
26. Following Lord Hanningfield's release from prison in September 2011 he was then arrested a few days later and bailed as part of an investigation into alleged offences arising from his expenses at the council.
27. It was decided in November 2012 by the City of London Police that no further action would be taken against these allegations. The council then decided to consider whether or not it was able to bring civil proceedings against Lord Hanningfield for recovery of any expenses claimed from the council or paid on his behalf. At the same time the council published a large amount of information on its website which included:
- A list of all the transactions on Lord Hanningfield's credit card which was a typed and redacted version of the transaction log (this is the information which it referred the complainant to initially)
 - Internal audit reports about the controls which were in place and how they were found to have been seriously flawed and how they have been improved since the matter had come to light.
28. In February 2013, Essex Police were ordered to pay damages to Lord Hanningfield following a claim he made relating to the manner of his arrest in September 2011.
29. In December 2013, the Daily Mirror published allegations that Lord Hanningfield had, on a number of occasions around July 2013, claimed expenses for attendance at the House of Lords when he had actually

spent a very short time on the Parliamentary estate. These allegations resulted in his suspension from the House of Lords in May 2014 and he was asked to repay an amount to them.

30. It was decided by the council in July 2014, following legal advice, to take no action against Lord Hanningfield in relation to the use of his credit card.
31. The council considers it important to note that despite the many news stories about this matter, the only time he has been found to have acted unlawfully is with respect to the expenses claim in the House of Lords. And although there has been concern about the use of the council credit card, there has been no suggestion that any other individual has unlawfully benefitted from goods and services purchased with the credit card.

Reasons for decision

32. Section 40(2) of FOIA states that:

"Any information to which a request for information relates is also exempt if-

- a) It constitutes personal data which do not fall within subsection (1), and*
- b) Either the first or second condition below is satisfied."*

33. Section 40(2) of the FOIA provides that third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the DPA.

Is the withheld information personal data?

34. Personal data is defined by the DPA as any information which relates to a living individual who can be identified from that data or from that data along with any other information in the possession or is likely to come into the possession of the data controller.
35. The council has explained to the Commissioner that the remaining redacted information is the names of individuals and in some cases the identification of an organisation and the role within the organisation. It considers this is also personal data as it can be used to identify an individual.

36. The Commissioner is satisfied that the remaining redacted information falls within the definition of personal data as set out in the DPA because it 'relates to' identifiable living individuals.

Would disclosure contravene any of the Data Protection Principles?

37. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of disclosure against the legitimate public interest in disclosing information.

Reasonable expectations

38. The council has told the Commissioner that in its view, individuals would have a reasonable expectation that the information would only be recorded and released where it is accurate and when it was only able to say with certainty which individual with that name the information relates to.
39. It also considers that there would be a reasonable expectation from individuals that information would not be released where it suggests the council has paid for their hospitality received when the council may not, in fact, paid for the hospitality due to not knowing whether they received any hospitality at all – in that the individual/s may not have actually been present or may not have participated in the hospitality.
40. Also the council does not have any way of knowing whether the individual/s paid for the hospitality themselves and this is also the case where the information is associated to another organisation or employer.
41. This is because, as explained in the 'Background' section of the decision notice, the credit card log was compiled for billing and coding purposes, not to record the receipt of hospitality to which the council accepts that its processes at the time were very weak and an internal audit report into the issue has criticised its lack of receipts. It provided an extract from this report:

"Without appropriate receipts ECC is unable to reclaim any VAT incurred on the transaction. It is also not possible to determine how the monies have been spent e.g. on a restaurant transaction it cannot be determined how many meals have been purchased or the value of any alcohol."

42. The council has also reiterated that even if the council had actually paid for the individual/s hospitality then it is unable to identify whether the individual/s were aware of this as it is unable to determine whether Lord Hanningfield told them the council would be paying for any hospitality.
43. Considering these circumstances and the fact there was potential fraud considered to which the police decided to take no action on, the council considers the individual/s would have an expectation that their personal data would not be released as there has never been a suggestion that the other individual/s have been a party to fraud.
44. The council has told the Commissioner that it has only sought consent from those who were members of the Corporate Management Board at the time who remain employed by the council. Only two people fell into this category - the council's Chief Executive and Assistant Chief Executive, who have given consent for their information to be released.
45. The council has not sought the consent from the others named on the logs. This is because most of those who were officers at the time are no longer with the council and the logs include approximately 1120 transactions and name around 150 different individuals. So would be impractical and time consuming to seek everyone's consent.
46. The council does consider that, in ordinary circumstances, the release about the hospitality that it has funded to an individual would be likely to be fair especially for senior employees. However it states that these are not ordinary circumstances in that although the expenditure would be accurate, it is likely that the information about the named individual/s is not. It does not consider that the individual/s would expect their data to be released due to the council's inadequate record keeping at the time which was criticised in an audit.

Consequences of disclosure

47. The council has explained to the Commissioner that due to the council's inadequate recording keeping at the time and considering the investigations, allegations and the prosecution involving Lord Hanningfield in relation to expenses it considers that the release of individual's names would link them in mind with the public issues surrounding Lord Hanningfield even though there has been no suggestion of fraudulent activity by anyone else.
48. It considers that there could be unjustified defamation and possible financial damage caused by damage to their career through a suggestion of association.
49. The council considers that the above would result in significant distress to the individuals.

50. The Commissioner does see that the release of the names could cause distress to the individual's when taking into account the fact that the council's recording keeping at the time was inadequate and due to the circumstances surrounding the case.

Balancing the legitimate rights of the data subjects with the legitimate interests in disclosure.

51. The council has told the Commissioner that transparency has been at the heart of its considerations for this matter. Much information has been published, including a list of all credit card transactions and audit reports and much information has been placed on its website.
52. The council notes that it published most information around this overall matter in November 2012 and this is the only request received for the names in the logs. The council considers that this suggests, at best, limited public interest in these names and that any legitimate purpose appears to be quite limited and outweighed by the possible damage to people's reputations, careers and distress caused.
53. The complainant has stated that all expenses incurred by elected members and senior officers are a matter of public record, and it does not seem an unreasonable infringement of privacy for details of council funds spent on their behalf to be made. The publication of this information would be fair to these individuals, as it is necessary in the interests of accountability and transparency in public spending.
54. The complainant argues that elected members and council officers could not reasonably expect that the spending of council funds by another council employee or elected member on their behalf to remain private as this would provide as a means to circumvent the council's publication policy. The same being said where one public body provides hospitality to another public body. In light of this the complainant considers that the public interest in disclosure on the grounds of transparency and accountability in the spending of public money far outweighs the exemption of section 40(2) of the FOIA.
55. The Commissioner in considering this case agrees that transparency and accountability for the spending and receipt of public money by a public body or its officers/ members is a key issue when it comes to legitimate public interest.
56. However, the spending in this case can only be legitimately linked to Lord Hanningfield, and by its own admissions, the council's record keeping of the logs were inadequate and this was supported by its internal audit report into the issue. The fact that the council is unable to determine whether the named individuals on the logs even received any

hospitality from the council or were aware they were receiving it is not going to show how or to who received this hospitality. It will only add to speculation and not the legitimate public interest in transparency and accountability of how public funds are being spent to the detriment of the named individuals.

57. The release, by the council, of the transaction logs identifying the Chief executive and Assistant Chief Executive does go some way to satisfying any legitimate interests in disclosure as these are the most senior people at the council.
58. The Commissioner sees that in this particular case, the public interest in legitimate accountability to expenditure by the council is in the release of the financial logs made by Lord Hanningfield. He does not see that releasing the names of individuals, in this case, adds sufficient weight to the public interests in transparency and accountability of the spending/receiving of public funds due to the council's inadequate record keeping at the time which has made it very difficult to identify if the named individual/s even received any hospitality to the transactions in question.
59. He has also taken into consideration that the council has acknowledged its procedures for recording the information at the time was weak, which was between March 2005 to March 2010, and that following serious criticism from its auditor it advised the Commissioner that it has reviewed its practices and implemented a new system. This also goes some way, in the Commissioner's view, to satisfy the public interest in that the council has implemented steps to improve its recording of such information.
60. So in consideration of this and the circumstances surrounding Lord Hanningfield's investigations the Commissioner decision is that any legitimate interests in disclosure of the remaining information does not outweigh the legitimate rights of the individuals personal data. Therefore the council has correctly relied on section 40(2) of the FOIA to withhold the remaining individual's names.

Right of appeal

61. 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

62. 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.
63. 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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