

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 April 2015

Public Authority: Bishops Cleeve Parish Council
Address: Parish Office
Church Road
Bishops Cleeve
Cheltenham
GL52 8LR

Decision (including any steps ordered)

1. The complainant has requested a breakdown of employment costs. Bishops Cleeve Parish Council (the council) refused the information under section 40(2) of the FOIA as it considered it to be third party personal data.
2. The Commissioner's decision is that the council has correctly relied on section 40(2) of the FOIA to refuse the request.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 1 August 2014, the complainant wrote to the council and requested the following information:

*"Employment costs at (budget) are £86,043, **one third** of total expenditure. Please provide, via this Freedom of Information request a full breakdown of these costs."*
5. The council responded on the 11 August 2014 advising that the employment breakdown figures are protected under the Data Protection Act 1998 (the DPA).

6. The complainant, on the 23 August 2014, asked the council what exemption under the FOIA it was relying on to refuse the information.
7. The council informed the complainant that it was relying on section 40(2) of the FOIA as it considered the requested information to be third party personal data.

Scope of the case

8. The complainant contacted the Commissioner on 8 December 2014 as he was not satisfied with the council refusing his request.
9. The council has informed the Commissioner that it does not conduct internal reviews.
10. The Commissioner notes that it is recommended as good practice for public authorities to conduct internal reviews. However, he also notes that this is a parish council which will have fewer resources than larger council's, so considers it appropriate to investigate the request without insisting on an internal review firstly.
11. The Commissioner considers the scope of the case is to determine whether the council is correct to rely on section 40(2) of the FOIA to refuse the request.

Reasons for decision

Section 40(2) of the FOIA

12. Section 40(2) of the 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."

13. 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?

14. Personal data is defined in 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.
15. The information sought is a full breakdown of employment costs at the council. The Commissioner considers this information would constitute personal data as it 'relates to' individuals. In this case, the salaries of the staff at the council.

Would disclosure contravene any of the Data Protection Principles?

16. 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

17. The council has told the Commissioner that the requested information relates to the council's four members of staff, the Clerk, Deputy Clerk, Accounts Assistant and Services Assistant. There is only one employee in each post and therefore makes each individual easily identifiable.
18. The council is of the view that employees would have an expectation that their salaries remain confidential and not disclosed. This consideration is part of the Financial Regulation of the council and recommended by the National Association of Local Councils.
19. The Council has also informed the Commissioner that it employees have been asked if the information can be released and consent was not given.
20. The Commissioner considers that, when working for a public authority, information on council expenditure, which includes information such as salaries, would carry an expectation that some information would be made available to the general public.
21. The Commissioner though, also sees that generally the more senior a person is, the greater the expectation is for transparency and accountability. However, even senior individuals will have reasonable

expectations that not all the information that is held about them will be made available.

22. The council has explained to the Commissioner that it follows the 2011 Transparency Code and is shortly to adopt the 2014 Transparency Code expectations. It states that none of the employees exceed the level where individual salaries should be published and they do not have budget or decision making control.
23. The council has informed the Commissioner that although the exact salaries are not published, it does publish the salary points and outlines the responsibilities for each role in its employment policy document available on its website or at the following link:
<http://btckstorage.blob.core.windows.net/site9670/Employment%20Policy%20May%202014.pdf>
24. As explained in the employment policy document, the pay scales for the salary points can be obtained from the Proper Office or found by running a web search for the "NJC Green Book" which brings up the following link: <https://www.atl.org.uk/Images/Green%20book.pdf>
25. The Commissioner considers that although two of the four employees, that the information relates, are the Clerk and Deputy Clerk, this is in relation to a parish council. Their responsibilities would not be considered on the same level as that of a chief executive or deputy chief executive of a larger council.
26. The council has explained that the Clerk and Deputy Clerk do not have budget or decision making control. The Commissioner has reviewed the pay scales, roles and responsibilities and does not consider that they warrant the same disclosure expectations as to what the more senior members of a larger council might have.

Consequences of disclosure

27. The council has told the Commissioner that disclosing exact salaries of the four council employees would be unwarranted and cause distress and therefore disclosure would be unfair.
28. The Commissioner holds the view that it would not have been within the reasonable expectations of the four council employees' for their precise salaries to be made public and sees that disclosure could be distressing to them. This is because salary information relates to peoples personal financial circumstances and disclosure of the exact salary of an individual is more intrusive than giving a salary band or the pay scale for a post.

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

29. The complainant has told the Commissioner that he wrote to the council to express his anger at the 12.7% increase in the council tax, which he states is against government guidelines and not subject to a referendum. 30% of this increase has gone to employment costs and he wants to see a breakdown of these costs.
30. The Commissioner appreciates that there is always going to be a legitimate public interest in understanding how public money is being spent, but in most cases this can be satisfied through the disclosure of a salary band rather than the precise salary. Or in this case, as an overall expenditure amount.
31. As explained in the Commissioner's guidance¹, exceptional circumstances are needed to justify disclosure of exact salaries when they are not routinely published. The Commissioner has noted the complainant's dissatisfaction in the increase of council tax that has gone towards employee costs, but he does not consider providing a precise breakdown of how these costs have been attributed to each of the four employees, which would bring an exceptional amount of scrutiny to them, to be warranted. This is especially so because the overall figure has been made publically available and the Commissioner considers that this overall figure goes some way to satisfying any legitimate public interest in how the council spends public money.
32. On consideration of the above, the Commissioner's decision is that disclosure of the requested information would be unfair to the four individual's and finds that the council was correct to rely on section 40(2) of the FOIA to refuse the request.

¹ [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)

Right of appeal

33. 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

34. 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.
35. 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
Group Manager
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Wycliffe House
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Cheshire
SK9 5AF