

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 June 2015

Public Authority: Hickling Parish Council
Address: 13 Mill Close
Hickling
Norwich
Norfolk
NR12 0YT

Decision (including any steps ordered)

1. The complainant requested evidence which the parish council relied upon when using a copy of the electoral roll for purposes relating to a village charity. The council applied section 40(2) to the information to withhold the names of individual within the correspondence.
2. The Commissioner's decision is that the council has incorrectly applied section 40(2) to the majority of the withheld information. He does however consider that the exemption was correctly applied to the private email addresses of parish councillors.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To disclose the names of the individuals which have been redacted from the emails which were disclosed to the complainant.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 30 November 2014 the complainant wrote to the council and requested information in the following terms:

"I refer to the letter attached below dated 15 September 2014.

It states "we have taken advice from NNDC and NALC who have both confirmed that the Parish Councillors were in fact correct and that the Parish Council can obtain and may use the full register for this purpose" [to check eligibility to vote under the proposed new HPFRG Constitution].

"I request copies of the advice taken from NNDC and NALC referred to in the letter and in the quoted extract above, together with copies of the communications which elicited this advice.

If it is the case that the advice was sought and taken verbally, I request a copy of the record /notes which would have been made of the conversations with NNDC and NALC in order to subsequently brief the parish council."

6. The council responded on 23 December 2014. It provided a copy of 2 emails which it said it had relied upon to base its decision, however it redacted the names of individuals from the emails.
7. Following an internal review the council wrote to the complainant on 30 January 2015. It upheld its initial decision.

Scope of the case

8. The complainant contacted the Commissioner on 2 February 2015 to complain about the way his request for information had been handled.
9. Her initial complaint was that as the redactions prevented her from being able to establish whether the advice was provided to the council by both the National Association of Local Council's (NALC) and North Norfolk District Council (the NNDC) as the council claims.
10. The Commissioner initially discussed the case with the complainant, who said that she might accept an independent verification that the advice was provided by both NALC and the NNDC if the Commissioner could verify that that was the case.

11. The council agreed to provide the unredacted copies to the Commissioner, and for him to verify that the emails referred to advice provided by individuals from both NALC and the NNDC to the complainant. The Commissioner did this, however after further consideration the complainant confirmed that she still wishes copies of the unredacted emails.
12. The scope of the Commissioner's investigation is therefore whether the council was correct to redact the names of individuals from the emails under section 40(2).

Reasons for decision

Background to the case

13. The Commissioner understands that the parish council used a copy of the full electoral roll to establish eligibility to vote in a charitable organisation relating to a building in the village, (the Hickling Playing Field or Recreation Ground Charity (HPFRGC)). At the time one of the parish councillors was also a trustee on the board of the charity.
14. The parish council argues that it sought advice from both NALC and the NNDC as to whether it was able to use a copy of the full electoral register to contact eligible villagers. The emails are internal council emails outlining the telephone advice which was received from NALC and the NNDC to other councillors. The advice was relied upon as evidence that NALC and the NNDC had advised that it could use the electoral role for the purpose of establishing villager's eligibility to vote. However the complainant, along with others, believes that using the electoral register in this way was an incorrect use of the parish council's access to the full electoral register. The council denies that that is the case.

Section 40(2)

15. Section 40(2) of FOIA states 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."

16. 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, or..."

17. In this case the relevant data protection principle to consider for this complaint is the first data protection principle. This states that:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."

18. When considering whether a disclosure of information would breach the first data protection principle the Commissioner firstly considers whether the processing of the information (i.e., in this case its disclosure) would be fair.

19. The first question which the Commissioner must consider is whether the individual would have any expectation that their information would be disclosed in response to an FOI request or whether it would have been obvious to them at the time that they provided their information. If they would not have any expectation, or if it would not have been obvious then this is a very strong indication that a disclosure would be not be fair. It should be pointed out that disclosure under FOI is considered to be to any person (i.e. to the whole world).

20. Where there is no expectation and it would not have been obvious the Commissioner must consider whether there is a pressing social need for the information to be disclosed. If there is it may still be fair to disclose the information in spite of the expectations of the individual. The pressing social need outweighs the expectations of the individual to make a disclosure of the information fair for the purposes of the first data protection principle.

Would a disclosure of the personal data be fair?

21. The council has provided its reasons why the names of the individuals should be redacted. It argues that the names are personal data of the individuals and as such are protected from disclosure by the provisions of the DPA. It says that, as such, the council's policy is not to disclose the names of individuals in response FOI requests generally.
22. Its further arguments were essentially that the individuals would not have had any expectation that their names would be disclosed in response to an FOI request. It provided arguments that due to the situation in the village there were strong reasons why the disclosure of names would not fall within the expectations of the individuals. It argues that there is a dispute with a small number of villagers over the issue of the charity and that a disclosure of the names may cause the dispute to worsen, possibly leading to members of the council being antagonised over their role. It argues that as this is the case it would be unfair to disclose the information.
23. It further argues that in respect of the names of the individuals from whom advice had been sought, one worked in an area exempt from the provisions of FOI and therefore would have no expectation that their names would be disclosed. It argues that the other would also not expect their information to be disclosed.
24. The Commissioner has considered this further. The seeming provision of a blanket exemption for the names of council staff or elected members is incorrect. There will always be situations where the personal data of public servants or elected members may need to be disclosed in response to requests. The first data protection principle provides the test for determining whether personal information can be disclosed.
25. The Commissioner has firstly considered the roles of the individuals involved, including the roles of the advisers from NALC and the NNDC.
26. Within a parish council, other than the clerk, the individuals are generally elected members; councillors, who make decision on behalf of the community. The decisions they take affect the community, or represent the wishes of the community. The role is therefore, in essence, a public facing role.
27. Similarly, the clerk to a parish council is a paid role which requires that he or she is the point of contact for any letters etc which members of the community or others wish to send to the council. Again, this is a public facing role.
28. Parish clerks details are frequently published as points of contact (as are details of the chairs of parish councils) on various government websites

providing information to the public. Councillors are also often named on parish council websites.

29. For this council, details of the clerk, and all of the elected councillors are available from the council website at <https://hicklingparishcouncil.wordpress.com>.
30. The Commissioner is therefore satisfied that the roles of councillors and the parish clerk for this council are already known, and that their roles are public facing roles. They have regular contact with the community, and the names will be known by members of the public generally.
31. The Commissioner is therefore satisfied that as regards details of work carried out on behalf of the council, the individual councillors and the clerk would have a strong expectation that these will be published, and that members of the community would be able to access these. For these aspects of their work therefore the Commissioner considers that a disclosure of names would generally be normal and fair for the purposes of the first data protection principle.
32. In this case the emails in question relate to 'behind the scenes' discussions with NALC and the NNDC regarding the use of the electoral register. The Commissioner is therefore satisfied that there may be less of an expectation that such correspondence might be disclosed in some circumstances. However the advice itself has been disclosed. Only the names of the councillors and council staff which have been withheld. The Commissioner therefore considers that as these individuals are already known to be associated to the council, the question of which councillor, (or the clerk) sought the advice is not particularly a private issue. They are carrying out their public duties as elected councillors or employees of the authority.
33. As councillors and public figures associated with the council the Commissioner is satisfied that the individuals must have had an expectation that such information might need to be disclosed, particularly where the council relies on that advice for purposes which may be contentious. If the advice which the council obtained does prove to be incorrect then disclosing the names will allow the public to question the councillors as to how that came about.
34. The Commissioner is therefore satisfied that it would be fair for the purposes of the first data protection principle to disclose the names of the individual council members.
35. The Commissioner notes however that the email includes the email addresses of the councillors to which it was copied. Where parish council's are concerned email addresses are often the personal/private

email addresses of the individuals. The Commissioner considers that there is no particular need or requirement for this information to be disclosed. It would not lie within the expectations of the individuals that private email addresses would be disclosed to other members of the public, unless they have already made this information available for members of the village to contact them over council business. The Commissioner therefore considers that the email addresses do fall within the scope of section 40(2) and the council was correct to redact these from the disclosed information.

36. As regards the individuals from NALC and the NNDC who provided advice to the council their expectations may not have been so strong that the information they were providing would be disclosed in response to a request. The individuals were simply answering telephone questions from members of the council regarding their plan to use the electoral register. It may not have crossed their mind that a subsequent FOI request to a different authority might result in their names and the advice they have provided being disclosed to the whole world. Again however the Commissioner must take into account the roles of those individuals, the nature of the advice they provided as well as how a disclosure of their name might detrimentally affect them.
37. In carrying out public duties and in advising public authorities as to the actions they are able to take regarding the electoral register there must be a degree of expectation that if the council relied on the advice it would seek to justify its actions by referring to the advice it had received. This is particularly the case where a contentious issue such as the use of the full electoral register. Additionally given the role that these individuals have within their respective organisations the Commissioner considers that there would be a clear expectation that their name would be given to the public during the normal course of carrying out their jobs.
38. The issue of the use of the full electoral register is not a minor one. It is a crime for anyone who has a copy of the full register copy and pass information from the register on to others if they do not have a lawful reason to do it. The reasons for doing so are defined in law. An improper use of the electoral register for purposes not defined within the legislation may amount to a criminal offence.
39. The complainant has provided the Commissioner with advice which she obtained which suggests that the use which the council put the electoral register to in this case is an incorrect interpretation of the law. If the defined purposes for using the full register do not include the use applied by the council in this instance then there is a strong public interest in that being identified so a similar mistake is not made again.

40. The Commissioner is therefore satisfied that in the case of these individuals a disclosure of the information would be fair for the purposes of the first data protection principle. He considers that there would be a level of expectation that the fact they provided advice would be disclosed, and there is a strong social need for the information to be disclosed bearing in mind the circumstances in this case.
41. As the Commissioner has considered that it would be fair for the information to be disclosed he must consider whether there is a condition with schedule 2 of the Act which will allow a disclosure of the names of the individuals.

Schedule 2 condition

42. Where a disclosure of the information would be fair and lawful then the next question is whether there is a criterion within schedule 2 of the Act for that information to be disclosed.
43. The Commissioner is satisfied that in this case the 6 criterion is applicable. This states that:

6(1)The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.
44. The Commissioner is satisfied that the council has relied upon advice to use the electoral register to determine eligibility of, and to contact members of the community regarding their eligibility to vote on behalf of a charity. The complainant has however provided evidence to the Commissioner that the advice which the council relied upon to do this was incorrect.
45. The redaction of the names from the emails has to an extent left an impasse in the understanding and the interpretation of the law in the context of this dispute which might be resolve if he names of the individuals is disclosed.
46. Taking into the account the importance of using the full electoral register for the defined purposes, together with the public facing roles fo those involved the Commissioner considers that a disclosure of their names would not cause unwarranted prejudice to the rights and freedoms or the legitimate interests of the individuals concerned.

47. The Commissioner therefore considers that a disclosure of the information is warranted for the purposes of the schedule 2 condition 6 in this situation.

Right of appeal

48. 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

49. 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.
50. 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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