

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 November 2016

Public Authority: Leeds City Council

Address: Civic Hall
Calverley Street
Leeds
LS1 1UR

Decision (including any steps ordered)

1. The complainant has requested information on the summonses issued for the non-payment or late payment of council tax by elected members in the last two financial years. Leeds City Council (the council) disclosed the names of two councillors who had each received a summons which resulted in a liability order. It withheld some information under section 40(2), and did not consider that the remaining fell within the scope of the request.
2. The Commissioner's decision is that the council initially failed to correctly identify all information falling within the scope of the request, and therefore breached section 1(1) and section 10(1). The council has incorrectly applied section 40(2) to all the requested information, with the exception of that relating to the councillor whose non-payment of council tax was by reason of bereavement and arrears accrued in the financial year prior to election. The Commissioner also finds that section 44 is not engaged.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the names of the 5 councillors who fall within the scope of the request, with the exception of the information relating to the councillor who the Commissioner finds section 40(2) was correctly applied to. She also requires the public authority to disclose the amounts of arrears for each of the 5 councillors, plus

that of the two councillors whose information it disclosed in the original response to the request.

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 1 June 2016, the complainant requested the following information:

"I would like to settle for the summonses issued to councillors in each of the last two financial years, the amounts for each and who the summonses were issued to."

6. On 14 June 2016 the council responded. It stated that four councillors had each been subject to a summons which led to liability orders, and provided the names of two if these. In relation to the other two, the council stated that section 40 applied and briefly explained that the reasons for this were that one councillor was jointly liable for the council tax, and in the other, the councillor had suffered a bereavement in circumstances which lead to non-payment of council tax. It also withheld the amounts in relation to all individuals.
7. The complainant asked for an internal review. The council provided the outcome of this on 15 June 2016 in which it maintained its position.

Scope of the case

8. The complainant contacted the Commissioner 28 June 2016 to complain about the way his request for information had been handled. In particular he was concerned that the council had withheld the names of two councillors and the amounts of all of the summonses. He was also concerned that the council had only disclosed information in respect of summonses issued which were then subject to a liability order. He stated that his request was for all councillors who had received summonses, not just those resulting in liability orders.
9. The Commissioner considers the scope of the case to be to determine whether the council was correct to withhold the amounts of all summonses and the names of two councillors. He will also address whether the council correctly identified all the information falling within

the scope of the request, and if so, whether this information has been correctly withheld.

Reasons for decision

Section 1 – Information in the scope of the request

10. Section 1(1) of the FOIA states that:

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

11. The complainant was concerned that the council had not identified all the information falling within the scope of the request. The complainant confirmed to the Commissioner that *“the request sought information on councillors who had received summonses, not only those that had subsequently gone on to received liability orders as well.”*
12. The Commissioner notes that the request asks for *“summonses issued to councillors in each of the last two financial years, the amounts for each and who the summonses were issued to.”* She agrees that it makes no specific reference as to whether or not the summonses proceeded to court or not, or whether liability orders were issued.
13. The Commissioner also notes that in his request for an internal review, the complainant specifically asked for clarification of the response as *“the request did ask for information on summonses issued”*.
14. The Commissioner is therefore satisfied that this information falls squarely within the scope of the request, and therefore within the scope of this case.
15. The council has confirmed to the Commissioner that it does hold information in respect of summonses issued to councillors which were later withdrawn by the council and which therefore did not proceed to court. The council states that it assumed that the applicant was not referring to such instances in his request. During the Commissioner's investigation, the council accepted that this information fell within the scope of the request, and asked that its apologies be conveyed to the complainant.

16. The Commissioner considers that the complainant's request was sufficiently clear in identifying that he required all summonses issued to councillors, not just those that resulted in a liability order. In any event, if the council had misinterpreted the request, the clarification provided in the request for internal review makes it patently clear that the complainant required information relating to all summonses.
17. The Commissioner therefore finds that the council failed to comply with section 1(1) of the FOIA as it failed to inform the complainant of all the information it held falling in the scope of the request.
18. As the council acknowledged that this information fell within the scope of the request, it has provided its arguments in relation to section 40(2)

Section 10(1) – Time for compliance

19. Section 10(1) requires that a public authority must comply with section 1(1) within 20 working days.
20. In confirming that the information relating to all summonses issued to councillors is held during the investigation, and in not doing so within the statutory time for compliance, the Commissioner finds that the council has also failed to comply with section 10(1).

Section 40(2) – The personal data of third parties

21. Section 40(2) provides 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.

22. 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...

Is the withheld information personal data?

23. Personal data is defined by section 1 of the Data Protection Act 1998 ("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, and includes any expression of opinion about the individual and any indication of the data controller or any person in respect of the individual...

24. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the Data Protection Act ("the DPA").
25. In this instance the Commissioner has identified the two councillors about whom the council has withheld the names and amounts of arrears. As the investigation identified other individuals falling within the scope of the request, there are therefore four other councillors whose personal data falls to be considered here. These are those who received a summons that was subsequently withdrawn.

Would disclosure breach any of the data protection principles

26. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
27. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations of the individuals

28. When considering whether a disclosure of personal information is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.

29. The Commissioner recognises that for the general public, it would certainly be beyond their reasonable expectations for information about their council tax arrears to be disclosed to the world at large. However, in view of the Upper Tier Tribunal case *Haslam v Information Commissioner and Bolton Council* [2016] UKUT 0139 (AAC), the Commissioner considers that elected officials should have a greater expectation of scrutiny regarding their payment of council tax.
30. It is clear from the Tribunal's decision that the critical element in balancing the rights of data subject with any legitimate public interest is the councillor's position as an elected official with public responsibilities. The Tribunal observed that "*those who have taken public office should expect to be subject to a higher degree of scrutiny and that information which impinges on their public office might be disclosed.*" "*A councillor is a public official with public responsibilities to which non-payment of council tax is directly and significantly relevant.*" "*In my view a councillor should expect to be scrutinised as to, and accountable for, his actions in so far as they are relevant to his public office.*"
31. It is also clear that section 106 of the Local Government Finance Act 1992, which bars a councillor from voting on the council's budget if he has an outstanding council tax debt of over 2 months is relevant to the case and will impinge upon a councillor's public office. However, it is not the only consideration to make in determining whether non-payment of council tax impinges on, or is relevant to, the councillor's public office.
32. The Tribunal's position was that whilst "*in the case of an ordinary member of the public, the payment or non-payment of council tax is essentially a private matter*", "*it is not reasonable for a councillor to expect not to be identified where he is summoned for non-payment of council tax*". The Tribunal acknowledged that whilst "*the identification of a defaulting councillor involves an intrusion into his private life...it is an intrusion that a councillor must be taken to have accepted when taking office*".
33. The Tribunal accepted that there might be exceptional cases in which the personal circumstances of a councillor were "so compelling" that their name should be protected. However, the Tribunal found that even though disclosure might cause some distress to the councillor, and damage to his reputation, this was not sufficient to outweigh the significant legitimate public interest in disclosure. In short, elected officials are not in the same position as other members of the public when it comes to disclosure of their names. They can expect their names to be disclosed in circumstances where ordinary members of the public might expect the opposite.

34. The council has provided details of mitigating personal circumstances in relation to both of the councillors to whom it issued a summons which was not withdrawn. It considers these circumstances supports its position that the names of these two individuals should not be disclosed. The council summarised these for the complainant in its response. It explained that one was due personal circumstances relating to bereavement, and the second was due to the councillor being jointly liable for the council tax with a business partner. Given the nature of the detail of the submissions provided to the Commissioner, which concern the personal circumstance of the individuals, disclosure of which could lead the individual being identified, the Commissioner has not replicated them in full detail here.
35. With regard to the councillor whose non-payment relates to bereavement, the council's position is that the specific circumstances of the non-payment, and the timing of this, mean that it is not in their reasonable expectations for the information to be disclosed. In addition to this, the arrears relate to the financial year prior to them becoming a councillor, and the councillor only became liable once elected due to the council's error. The Commissioner has had regard to the more detailed circumstances of both incurring the debt, and the reason for not paying on time, and is satisfied that it was not within the reasonable expectations of this individual for the information to be disclosed. The specific arguments are not repeated here as to do so would be likely to identify the individual in question.
36. The council has stated that it would not be fair to disclose the information in respect of the councillor who received a summons in respect of a joint liability council tax because to do so would imply that the fault was entirely his. The council acknowledges that it could mitigate this by explaining that the council tax was jointly owed, but states that to do so would disclose the personal data of the other bill payer, and this would be an unfair disclosure of their personal data. The council has argued that the identity of the person with whom the councillor is jointly liable could be obtained using the internet and social media.
37. The council has not provided any mitigating circumstances in respect of the four councillors to whom a summons was issued and withdrawn, other than to say that in instances where the councillors have attempted to put matters right to the extent that the summons is withdrawn, then the matter has not become public before the courts, and is therefore a personal matter between the individual and the council.
38. With regard to the amounts of the defaults, the council has argued that this was not an issue before the Tribunal, and therefore it would not be within the reasonable expectations of the individuals for this to be

disclosed, except to say that section 106 applies to a given councillor, if that is the case.

39. The Commissioner finds that the Tribunal's states that "*council tax default strikes at the heart of the performance of a councillor's functions*", and as such it is clear that there should be an expectation of disclosure, aside from the requirements of section 106. The Commissioner considers that disclosure of both the names of councils who received summonses which were then withdrawn, and the amounts of the defaults in all cases represent an intrusion and scrutiny that councillors should expect as their actions in respect of council tax payment are relevant to their public office.

Consequences of disclosure

40. With regard to the councillor about whom the council has submitted details of mitigating personal circumstances relating to bereavement, it states that disclosure of their name could potentially cause anxiety and distress. It has argued that given the personal circumstances, disclosure would be unfair and would not best serve the public interest.
41. With regard to the remaining councillors, the council has argued that a consequence of disclosing the information would be to diminish public confidence in each councillor as a public official. The question therefore is whether this consequence is warranted in light of the seriousness of actions which impinge on their abilities to fulfil the remit of their public office.

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

42. In this case, the council and the Commissioner both recognise that under schedule 2 of the DPA, the main condition for processing that may apply in this case is condition six, which states that the processing will be fair where it is for the legitimate interests pursued by the data controller or a third party, and is not unwarranted by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.
43. It is always the case that senior employees of a public authority, and elected officials would have a greater expectation that personal data about them may be disclosed. This is due to the responsibilities they have for public money and decision making and also to fairly and honestly represent the public. These are the considerations at the heart of this decision. To balance the rights of the data subjects with the legitimate interest in disclosure, the Commissioner has considered whether the disclosure warranted in the circumstances of a councillor's obligations to protect the council's resources, to act in accordance with

the law, and to act in accordance with the trust which the public has placed in them.

44. In balancing the rights and freedoms of the individuals, the Commissioner has had regard to the Tribunal decision. It is clear that by virtue of section 106 of the Local Government Finance Act, and by virtue of the fact that they are elected representatives, the individuals in question should expect a greater level of scrutiny than an ordinary member of the public.
45. The Commissioner recognises that public figures must expect a high degree of scrutiny particularly in regard to their functions in office. Whilst recognising an individual's Article 8 rights to a private life under the Human Rights Act 1998, there may be occasions (as in the circumstances of both the Tribunal case, and this case) when what happens in a public figure's private life impairs their ability to satisfactorily perform their public duties.
46. With regard to the councillor whose non-payment was for reason of bereavement, the council has argued that their *"failure to pay would be unlikely to impact on public perceptions or diminish public confidence in them as a public figure."* This is because the arrears relate to a time that predates them becoming a councillor. The council also thinks that the public would regard debts of the nature incurred by the councillor to be entirely personal matters.
47. The Commissioner has also considered the mitigating personal circumstances which were advanced by the council in respect of this individual. She recognises that given the personal nature of the reasons, disclosure may well cause anxiety and distress to the individual. She is also mindful that as the council tax debt was accrued some time prior to their election as councillor. With regard to this councillor, the Commissioner finds that in view of the mitigating circumstances which led to the non-payment, not least that the debt was accrued prior to election, the rights and freedoms of this individual outweigh the more limited legitimate interests in disclosure of the information.
48. With regard to the councillor who was jointly liable for the council tax, the council's arguments centre on the risk of disclosing the personal data of the person with whom the joint liability lies. It has provided limited mitigating circumstances in respect of the councillor, and has stated that the public is likely to think that the fault in accruing the council tax debt lies solely at the councillor's door. Therefore, in order to counter this, the council argues that the councillor may feel compelled to explain the situation that arose between the two jointly liable parties, and this would be very likely to identify the other individual who, it

argues, would have no reasonable expectation that their personal data would be disclosed in this way.

49. As an elected representative with the associated responsibilities of office, the Commissioner would argue that the councillor should have been mindful of this fact in their dealings with their business partner. Therefore, whilst there is a risk that the business partner's personal data may be disclosed in relation to non-payment of council tax, the spotlight, and the legitimate interest is in the councillor allowing the situation to occur despite the impact this has on their role as an elected official.
50. Turning to the councillors who received a summons which was withdrawn, the council has argued that if a summons is issued then withdrawn, this is entirely different from circumstances where a summons is issued, and no payment is made, resulting in the matter being heard in court. The council accepts that where a councillor has failed to make payment until ordered to do so by the court, this is likely to impact public perceptions and diminish public confidence in that councillor. However, it argues that when a summons is withdrawn, the matter has not become public and should continue to be considered as a private matter between the councillor and the council.
51. The council has also argued that the cases with these four councillors differ considerably to the case of Haslam, as in that case, the councillor did appear in court. It has therefore suggested that it would be wrong to assume that the factors the Tribunal identified as relevant to expectation of disclosure in that case would be precisely the same as for these four.
52. The Commissioner has had regard to the Tribunal and finds that it identified that the relevant factor is whether there is an impact upon public office. Whilst the public interest is more obvious in cases where a councillor has received and failed to respond to both reminders and summonses, there is still a clear public interest in knowing when councillors have failed to pay their council tax to the point where a summons has been issued against them. The Commissioner considers that although a councillor has made arrangements to pay outstanding council tax following the issue of a summons, it is still clearly in the public interest that a public official, entrusted to make decisions on behalf of the public, and responsible for the public purse, has failed to pay their council tax to the point that the council felt compelled to issue a summons. The fact that the council tax was paid after that point still does not fully mitigate the fact that a public official failed to pay their council tax, despite reminders.
53. In support of this point, the Commissioner notes that the Tribunal stated that *"the fact that the name may have been in the public domain*

through the court process is not a factor that has influenced my decision." This implies that the existence of some form of prior publicity or elevation of enforcement was not the determining factor in the decision.

54. With regard to the amounts of the arrears, the council is firmly of the view that the Tribunal decision does not provide authority for saying it would be fair to disclose the amounts of arrears at the point in time of the summons or at any other time. It argues that it can only be considered as fair to disclose the fact that section 106 applies to a councillor, as this directly impacts upon their role as a councillor, but this does not mean that they would reasonable expect any other aspect of their council tax account to be disclosed.
55. The Commissioner does not agree with this position. The Tribunal concluded that *"a councillor's default in paying council tax is a serious matter of public concern, both as to the ability of the councillor to perform his key functions and in terms of public confidence and accountability. As well as the impact of section 106, non-payment of council tax puts the councillor in conflict with the obligations of his office including to protect the council's resources, to act in accordance with the law, and to act in accordance with the trust which the public has placed in him."* It is clear therefore that it is reasonable to look at the wider impact regarding public confidence in the councillors and the conflict that non-payment puts them in.
56. The Commissioner agrees that the Tribunal highlights a clear public interest in disclosure of councillor council tax defaults where section 106 applies, but she also finds that there must be a case by case consideration of the wider public interest in non-payment of council tax by councillors in other circumstances. She maintains, as highlighted by the Tribunal, that non-payment of council tax puts a councillor in direct conflict with the obligations of their office, not least to protect the council's resources and act in accordance with the law.
57. The Commissioner also finds that the amount of the default is relevant in terms of the accountability and suitability of the councillor for their position. It seems to the Commissioner that the public may wish to make a distinction between those councillors who have missed one or two payments, and promptly repaid the debt on receipt of a reminder, and those who have defaulted over a longer period and who the council have had to take further steps against for payment. It is therefore necessary to disclose the amount of the default in order for the public to judge on each case whether they can still place their trust in each councillor.

Conclusions

58. The Commissioner finds that the public interest rests in disclosure of all the requested information, with the exception of that relating to the councillor whose non-payment of council tax relates both to bereavement and to arrears accrued prior to election.
59. She finds that the Tribunal supports the disclosure of information, including the amount of the default, relating to non-payment of council tax by councillors in circumstances where this is relevant to their public responsibilities. Not least as highlighted by the Tribunal, that a councillor is obliged to protect the council's resources, act in accordance with the law, and act in accordance with the trust placed in them the public.

Section 44 – Prohibitions on Disclosure

60. Section 44(1) of FOIA provides that:

“Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it-

(a) is prohibited by or under any enactment,

(b) is incompatible with any Community obligation...”.

61. The council has stated that where the Commissioner takes the view that the requested information should be disclosed, it seeks to rely on its duty of care to respect for private or family life under Article 8 of the European Convention on Human Rights, as embodied in the Human Rights Act 1998.
62. Article 8 ECHR says that everyone has a right to respect for their private and family life. It also says that a public authority shall not interfere with that right unless that interference is in accordance with the law and necessary in pursuit of certain legitimate and specified interests.
63. The council argues that in order for any interference to be in accordance with law, the law in question must be accessible to the individual concerned and the effects must be reasonably predictable. The council relies on the Supreme Court case; *The Christian Institute & Others v The Lord Advocate* (2016) and the case of *R(on the application of Catt) v Commissioner of Police of the Metropolis & Anor*.
64. The council's view is that the FOI provisions and the data protection principles alone, without any detailed guidance, or ICO or Tribunal decisions, were not reasonably predictable so as to shape the expectations of the individuals in this case. The council acknowledges that whilst it might be said that since the date of the Tribunal's decision

an individual councillor is now able to regulate their conduct in the knowledge that if they receive a summons for non-payment of council tax, certain information about this may later be disclosed under FOIA. However, it argues that the information requested in this predates that decision, and all summonses in question also precede the decision. Therefore, it is the council's position that at the time the councillors in question failed to pay these charges which led to the summonses, they had no way of knowing that information about this might be disclosed at some stage in the future, and no opportunity to adjust their conduct accordingly.

65. The council therefore argues that disclosure of the withheld information would not be a permitted interference under the Article 8 rights, and it follows that the exemption in Section 44(1)(a) should be applied.
66. The Commissioner acknowledges and understands the council's argument in respect of section 44 of the FOIA and Article 8 of the ECHR, particularly with regard to the reasonable predictability, or otherwise, of the disclosure. However, the Commissioner's view is that Article 8 could potentially act as a statutory prohibition in cases where the information fell short of being personal data, but there was still an identifiable potential Article 8 interference. However, in cases such as this where the information is clearly personal data, the considerations as to fairness will mirror those in a section 40(2) consideration.
67. In the Haslam case, the Tribunal accepted that the decision it was making involved a balancing exercise between Articles 10 and 8. The Tribunal considered whether disclosing the identity of the councillor was unwarranted by reason of the prejudice to the Article 8 rights of the councillor. It found that disclosure was likely to interfere with the councillor's rights and that "the issue substantially overlaps with that of fairness." It concluded that the prejudice was not unwarranted.
68. In addition to this, the Commissioner has had regard to the council's arguments that since the Tribunal decision post-dates the non-payment of council tax, the councillors had not had the opportunity to adjust their behaviour accordingly. The Commissioner considers that the need to adjust their behaviour with regard to council tax payment must have been accepted in their election to public office. It is clear that the public would expect a councillor to be a model of best practice in all aspects of citizenship, not least in terms of paying council tax in a responsible and timely manner.
69. The Commissioner's view is that whilst questions of fairness and whether the interference with Article 8 rights are warranted are subjective and need to be considered in each case, but they are essentially considered together. Where disclosure would not breach the

DPA, it will not contravene Article 8. Therefore, for the same reasons outlined in relation to the application of section 40(2), the Commissioner finds that the disclosure of the withheld information would not be incompatible with Article 8 ECHR. The Commissioner therefore finds that section 44 is not engaged.

Right of appeal

70. 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

71. 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.
72. 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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