

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 26 September 2017

**Public Authority:** Pirton Parish Council  
**Address:** The Old Post Office  
6 Great Green  
Pirton  
Hertfordshire  
SG5 3QD

#### Decision (including any steps ordered)

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1. The complainant has requested a copy of the resignation letter submitted by the former Chair of Pirton Parish Council ("the Council"). The Council withheld the information under section 40(2) of the Freedom of Information Act ("the FOIA").
2. The Commissioner's decision is that the Council has correctly withheld the information under section 40(2).
3. The Commissioner does not require the public authority to take any steps.

#### Request and response

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4. On 25 October 2016, the complainant wrote to the Council and requested information in the following terms:

*I noted that the PC at the October meeting decided that my request to publish the Resignation letter of [redacted name], the former Chair of the Parish Council, was rejected. [...]*

*Under the Freedom of Information Act I must seek that this resignation letter be published...*

5. The Council responded on 1 November 2016. It stated that the information was withheld under section 40(2).
6. Following an internal review the Council wrote to the complainant on 6 December 2016. It maintained its original response.

### **Scope of the case**

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7. The complainant contacted the Commissioner 8 March 2017 to complain about the way his request for information had been handled, and specifically the Council's application of section 40(2).
8. The Commissioner considers the scope of this case to the determination of whether the Council has correctly applied section 40(2).

### **Reasons for decision**

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#### **Section 40(2) – Personal information**

9. Section 40(2) 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.*

10. 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?

11. 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...*

12. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA. In this instance the Commissioner has reviewed the withheld information, and has identified that it would clearly relate to the individual named in the request. As such, the information would represent personal data.

Would disclosure breach the data protection principles?

13. 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.
14. 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 any potential consequences of the disclosure against the legitimate public interest in disclosing the information.

*Reasonable expectations of the data subject*

15. When considering whether the disclosure of personal data 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.
16. In the circumstances of this case, the Council has asked the individual if they consent to the information being disclosed to the public under the terms of the FOIA. The individual has confirmed that they do not.
17. In their submission to the Commissioner, the complainant has explained that the request has been made in connection to a local dispute involving the ownership of land, as well as other concerns that he holds

about the general transparency of the Council and actions of Councillors. In light of this context, the complainant considers that the public have a right to know the reason for the individual's resignation of their role. The complainant has further submitted that the resignation letter of a former Councillor has recently been published following that individual giving their explicit consent for this.

*The consequences of disclosure*

18. The Council considers that the infringement on the privacy of the individual would be significant, and would subject them to an unexpected level of scrutiny in their community.

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

19. There is always some legitimate public interest in the disclosure of any information held by public authorities. This is because disclosure of information helps to promote transparency and accountability amongst public authorities. This in turn may assist members of the public in understanding decisions taken by public authorities and perhaps even to participate more in decision-making processes.
20. However, in the circumstances of this case the withheld information clearly relates to an individual's decision to resign from their former role as Chair, rather than their public activities whilst part of the Council. As noted by the Commissioner in a similar case<sup>1</sup>, information such as resignation letters have a direct connection to an individual's personal life, even where the individual was an elected representative. In the circumstances of this case there is no indication that the individual wrote the letter in the expectation that it would become a public document, and the Commissioner recognises that its disclosure would be likely to cause distress to the individual by causing an incursion into their privacy. Whilst the Commissioner notes that another individual has given their consent for their resignation letter (from the role of Councillor) to be published, such an action is voluntary and does not impose an obligation on the Council to disclose all such information.
21. Whilst the Commissioner notes that the request has been made in connection to wider disputes about the actions of the Council and Councillors, any such matters would need to be referred to the appropriate authorities with jurisdiction to determine them.

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<sup>1</sup> Decision notice FS50624012

22. Having considered these factors, the Commissioner has concluded that the disclosure of the individual's personal data would not be fair, and that the Council has correctly applied section 40(2).

## Right of appeal

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23. 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)

24. 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.
25. 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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**