

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 February 2018

Public Authority: Cardiff Council

Address: County Hall
Atlantic Wharf
Cardiff
CF10 4UW

Decision (including any steps ordered)

1. The complainant requested information about the management structure of Cardiff Council ('the Council'). The Council provided the information, subject to some names being redacted under section 40(2). The Commissioner's decision is that the Council correctly applied section 40(2) to the remaining withheld information. The Commissioner does not require any steps to be taken.

Request and response

2. On 8 May 2017 the complainant wrote to the Council and requested information in the following terms:

"There is some general information I would like to obtain regarding the management structure of the Council when it comes to Planning and Conservation.

1. *I'd appreciate it if you could inform me where*

- a) *Conservation*
- b) *Strategic Planning & Environment*
- c) *Regeneration*
- d) *Placemaking*

fit in the Management structure and provide me with a diagram if available.

2. *Where can I find the overall structure and organisation of City Council online in a diagram or other form.*
 3. *Is Conservation integrated with Planning and Building Regulation/Control? Are there two departments of Planning and Buildings or only one? How they relate, under what supervision?*
 4. *In Planning and Conservation who are the operational Managers and Directors, what are their contacts?*
 5. *How many work as staff in Planning and is there a planning committee [sic]. If so, who are these people, how often they meet and where can I find that info online.*
 6. *The conservation team, how many are they and do same staff work at both conservation and planning?"*
3. The Council responded and provided a response to the request, along with two organisational structure charts, one for the whole of the Council (attachment 1) and one for its planning department (attachment 2). The Council redacted the names of members of staff below the grade of Operational Manager within attachment 2.
 4. On 4 July 2016 the complainant requested an internal review of the Council's handling of your request.
 5. The Council provided the outcome of its internal review on 19 July 2016 and upheld its decision that section 40(2) applied to the names of officers which had been redacted from attachment 2.

Scope of the case

6. The complainant contacted the Commissioner on 17 August 2017 to complain about the way her request for information had been handled. She raised concerns about the information which the Council had withheld from the documents disclosed.
7. The scope of the Commissioner's investigation into this complaint is to determine whether the Council should disclose the remaining

information held 2017, namely the staff names it redacted from the organisational chart of its planning department (attachment 2).

Reasons for decision

Section 40 – the exemption for personal data

8. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').
9. The Council considers that the information requested constitutes the personal data of the individuals concerned and that disclosure would breach the first data protection principle.

Is the requested information personal data?

10. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by section 1 of the DPA. It defines personal information as data which relates to a living individual who can be identified:
 - from that data,
 - or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
11. In considering whether the information requested is "personal data", the Commissioner has taken into account her own guidance on the issue¹. The two main elements of personal data are that the information must "relate to" a living person, and that person must be identifiable. Information will "relate to" a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts them in any way.
12. The withheld information in this case comprises the names of officers below Operational Manager level. The Council has disclosed their job

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http://ico.org.uk/for_organisations/guidance_index/~/_media/documents/library/Data_Protection/Detailed_specialist_guides/PERSONAL_DATA_FLOWCHART_V1_WITH_PREFACE001.ashx

title on the organisational structure chart, but redacted the names of the officers in question. The Commissioner accepts that the individuals in this case would be identifiable from the information and therefore accepts that the information in the context of this request is personal data as defined by the DPA.

Would disclosure breach one of the data protection principles?

13. Having accepted that the information requested constitutes the personal data of a living individual other than the applicant, the Commissioner must next consider whether disclosure would breach one of the data protection principles. She considers the first data protection principle to be most relevant in this case. The first data protection principle has two components:

- personal data shall be processed fairly and lawfully; and
- personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

Would disclosure be fair?

14. In considering whether disclosure of the information requested would comply with the first data protection principle, the Commissioner has first considered whether disclosure would be fair. In assessing fairness, the Commissioner has considered the reasonable expectations of the individuals concerned, the nature of those expectations and the consequences of disclosure to the individuals. She has then balanced against these the general principles of accountability and transparency as well as any legitimate interests which arise from the specific circumstances of the case.

15. The Council confirmed that all its staff can potentially be classed as public facing officers, however staff below Operational Manager level do not have financial decision making responsibilities. The Council advised the Commissioner that it has had a working assumption in place since 2006 that the names of staff below Operational Manager are not disclosed in relation to freedom of information requests. This policy has been communicated through training provided to staff since 2006.

16. In light of the above, the Council contends that the officers in this case would have had no reasonable expectation that their names would be disclosed in response to this request.
17. In relation to the consequences of disclosure of the withheld information, the Council advised that as the officers in this case *"have no decision making powers and therefore their details being put in the public domain would potentially mean that members of the public would be able to contact them. This would therefore open up the potential for junior staff being subject to increased harassment, which could significantly prejudice the Council's operations"*.
18. The Council advised the Commissioner that, prior to the working assumption in 2006, it consulted informally with a number of colleagues. Many reported receiving a number of unsolicited calls, often marketing calls, but also confused members of the public contacting the wrong officer. The Council considers controlling telephone access channels to be a major contribution to efficiency and cost savings.
19. When considering what information third parties should expect to have disclosed about them, the Commissioner considers that a distinction should be drawn as to whether the information relates to the third party's public or private life. However, although the personal data of Council employees in this context does relate to their public life, the Commissioner accepts that, as a result of the consistent use of the working assumption in place since 2006, the officers identified in the withheld information would have a reasonable expectation that their names would be redacted from any disclosures made under the FOIA.
20. The Commissioner is prepared to accept that a possible consequence of disclosing staff members' personal data is that these individuals could be contacted direct by members of the public. This has the potential to disrupt the existing communication channels in place at the Council.
21. Notwithstanding a data subject's reasonable expectations or any consequences of disclosure, it may still be fair to disclose the requested information if there is a more compelling public interest in disclosure
22. In her internal review request, the complainant stated that she needed the information as she *"would like to make an informed decision who I prosecute as defendants at City Council so it is proportional to their involvement of the offences, role and skill"*. In her complaint to the Commissioner the complainant pointed out that it is not possible to assess the seniority of individuals as there is a note on the chart which states that *"The vertical position on the page does not indicate seniority"*. She also pointed out that she had not requested sensitive personal data but *"strictly work related to form opinion based on facts"*

with other requests and make sense in big picture the various urban development aspects of the city's build and natural habitat".

23. In the complainant's opinion the consequences of disclosing data are as such:

"...all planning applications and proposals are made public, the name of planners are obvious and their sensitive data such as signatures are protected. Therefore I would have expected that on management, senior, decision, budget, consultation level the names will be fair and square obvious to the community. Part of an application process is a consultation and comments from the public. Not to mention that in a planning committee it used to be customary law to being on same page the views of community, experts and various third parties".

24. In a further email to the Commissioner the complainant stated that:

"I expect the veil of secrecy at the organisational diagram being lifted. No less than a 100% transparency, unless there are grounds in statute that permit a limited access to information.

What City Council blocks from public's view is information of all those liable in decision making and influence [sic] of power, not in coordination position (administrative management) who are not liable for strategy and implementation of City Operations.

Even senior positions have various levels of seniority and responsibility. This is indicated by the small print.

25. The Commissioner accepts that there is a legitimate public interest in disclosure of information which would promote accountability and transparency. The Commissioner appreciates that the complainant may have a personal interest in disclosure of the withheld information based on the representations she has made, as outlined above. However, the Commissioner does not consider that it is necessary for the names of staff working within the Council's planning process to be disclosed in order to promote increased transparency and public participation in the planning process. There are clear mechanisms already in place in relation to public consultation about planning applications.
26. In conclusion, the Commissioner is satisfied that the junior officials would have a reasonable expectation in the circumstances of this case, based upon established custom and practice, of their names being redacted from any disclosures made under FOIA. The Commissioner does not consider that any legitimate interests of the public in accessing the information are sufficient to outweigh their right to privacy. As the Commissioner has decided that the disclosure would be unfair, and

therefore in breach of the first principle of the DPA, she has not gone on to consider whether there is a Schedule 2 condition for processing the information in question. The Commissioner therefore upholds the Council's application of section 40(2) to the withheld information.

Right of appeal

27. 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

28. 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.
29. 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

David Teague
Regional Manager (Wales)
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Wycliffe House
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