

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 29 June 2022

**Public Authority:** Llangunnor Community Council  
**Address:** [clerk@llangunnor-cc.org.uk](mailto:clerk@llangunnor-cc.org.uk)

#### **Decision (including any steps ordered)**

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1. The complainant requested copies of travel expense forms, invoices and a policy relating to members attending meetings. Llangunnor Community Council (the Council) provided some information, stated other information was not held and withheld travel expense forms under section 40(2) (personal information) of the FOIA. The Commissioner's decision is that section 40(2) FOIA was applied correctly to the withheld information. The Commissioner requires no steps to be taken.

#### **Request and response**

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2. On 10 August 2021, the complainant wrote to the Council and requested information in the following terms:

"Could you please treat the following as a freedom of information request, I have not been able to find the information on the community council website.

1. Travelling expenses claimed by councillors/staff. For the purpose of clarity I would like to see a copy of the travelling claim form paid by the council in the March 2021 meeting (name of previous clerk redacted) and the travelling claim form paid in the June 2021 meeting (name of current clerk redacted) the minutes of both these meeting provide the total paid to each individual, but I would like to see the submitted claim form.

2. Would it be possible to have copies of invoices submitted by the handyman to the community council for work carried out between 01/03/2021 and 30/06/2021. For clarity, I understand that the

handyman submits an invoice for work done each month, I would like to see copies of these for the months of March, April, May and June 2021 (please remember to redact any personal/private information)

3. Could you please provide a copy of the policy referred to in the July 2021 in respect to item 4.4. For clarity this is the policy which refused to allow a member of the public to attend a council meeting as they did not provide an address”.
3. The Council responded on 11 September 2021 and stated that information relating to part 1 of the requests – travel expenses of the clerks - was exempt under section 40 of the FOIA. The Council provided copies of the invoices relating to part 2 of the request and stated that no recorded information was held in respect of part 3 of the request.
4. On 14 September 2021 the complainant requested an internal review of the Council’s refusal to disclose copies of travel expense forms for its clerks. The complainant pointed out that the total amounts paid to the two individuals in respect of travelling was quoted in the minutes of Council meetings and as such they did not think that section 40 of the FOIA applied.
5. The Council provided the outcome of its internal review on 2 October 2021 and upheld its decision that travelling expense claim forms for its clerks was exempt under section 40(2) of the FOIA.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 17 October 2021 to complain about the way their request for information had been handled. Specifically, the complainant raised concerns about the Council’s refusal to provide copies of travel expense claim forms – part 2 of the request.
7. The scope of the Commissioner’s investigation into this complaint is to determine whether the Council correctly applied section 40(2) to the withheld information.

### **Reasons for decision**

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#### **Section 40 personal information**

8. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.

9. In this case the relevant condition is contained in section 40(3A)(a)<sup>1</sup>. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
10. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of the FOIA cannot apply.
11. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

***Is the information personal data?***

12. Section 3(2) of the DPA defines personal data as:

*"any information relating to an identified or identifiable living individual".*

13. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
14. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
15. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
16. The withheld information in this case relates to travel expenses paid to the former and current Clerk to the Council. The Commissioner is satisfied that expense claim forms relate to the former and current Clerks to the Council. He is satisfied that this information both relates to and identifies the clerks concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
17. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under

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<sup>1</sup> As amended by Schedule 19 Paragraph 58(3) DPA.

the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles. The most relevant DP principle in this case is principle (a).

### **Would disclosure contravene principle (a)?**

18. Article 5(1)(a) of the UK GDPR states that:

*"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".*

19. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.

20. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

### **Lawful processing: Article 6(1)(f) of the UK GDPR**

21. Article 6(1) of the UK GDPR specifies the requirements for lawful processing by providing that *"processing shall be lawful only if and to the extent that at least one of the"* lawful bases for processing listed in the Article applies.

22. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

*"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"<sup>2</sup>.*

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<sup>2</sup> Article 6(1) goes on to state that:-

*"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".*

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA and by Schedule 3, Part 2, paragraph 20 the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) provides that:-

*"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".*

23. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:-
- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
  - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
  - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
24. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

*Legitimate interests*

25. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
26. The complainant has suggested that the Council has withheld the information because disclosure would show "excessive repeat journeys" being made by the Clerks.
27. The Commissioner accepts that there is a legitimate interest in transparency in respect of expenses claimed by public officials. The expenses are paid out of public funds to the individuals in their role as Clerk to the Council. The Commissioner also considers that there is a legitimate interest in understanding why expenses are paid and ensuring that this is done appropriately from public funds.
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*Is disclosure necessary?*

28. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
29. In this case the Commissioner notes that the Council details the total amounts paid in travel expenses to its clerk in the minutes of meetings which are published on its website. The Commissioner considers that this goes a long way to meet the legitimate interests in this case. However, the Commissioner accepts that, to provide a full picture of the expenses claimed, disclosure of the expense claim forms would be necessary.

*Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms*

30. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
31. In considering this balancing test, the Commissioner has taken into account the following factors:
  - the potential harm or distress that disclosure may cause;
  - whether the information is already in the public domain;
  - whether the information is already known to some individuals;
  - whether the individual expressed concern to the disclosure; and
  - the reasonable expectations of the individual.
32. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
33. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.

34. The Council states that travelling expenses paid to councillors are a matter of public record and it publishes an annual statement of all payments and expenses made to councillors. However, the Council advised that travelling expenses claimed by its employees are not part of this public record.
35. The Commissioner accepts that the individuals concerned would have an expectation that the total amount of expenses and other allowances that they are paid would be made public via published minutes of Council meetings. However, the Commissioner considers that the individuals would have had no reasonable expectation that copies of their travel expense claim forms would be put into the public domain.
36. The Commissioner considers that disclosure of the withheld information would put into the public domain biographical information about identifiable individuals as it would reveal their location at specific dates and times. The Commissioner considers that disclosure of this level of information about the expenses of the clerks would be intrusive and would be unfair to the individuals concerned.
37. Based on the above, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful. Given this conclusion, the Commissioner is not required to go on to consider whether disclosure would be fair or transparent.
38. Since the Commissioner is satisfied that disclosure would be unlawful, and would contravene the first DP principle, the Commissioner finds that the Council was entitled to rely on section 40(2) in respect of the withheld information.

## Right of appeal

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39. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

40. 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.
41. 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 .....**

**Joanne Edwards**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**