

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

### **Decision notice**

**Date:** 7 February 2023

**Public Authority:** Cornwall Council  
**Address:** New County Hall  
Treyew Road  
Truro  
Cornwall  
TR1 3AY

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

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1. The complainant requested information from Cornwall Council ('the public authority'). The Commissioner's decision is that the public authority is entitled to rely on section 40(2) of FOIA to withhold some of the requested information. He is also satisfied that the Council does not hold any further information within the scope of the request.
2. The Commissioner does not require the public authority to take any steps.

### **Request and response**

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3. On 18 March 2022, the complainant made the following request for information to the public authority:

"Please can you provide me details including amounts and payees and specify the work or services undertaken in return for these payments for all school governors that have been either paid for by, appointed by, instructed or employed as consultants by Cornwall Council to undertake either governance roles in schools in your area or governor consultancy work paid for by Cornwall Council."

4. Following correspondence from the public authority seeking clarification of the request:
  - On 24 March 2022, the complainant confirmed:

“Please provide information for the years 2018, 2019, 2020, 2021 & 2022 to date.”
  - On 26 March 2022 the complainant confirmed:

“Please could I have the information in Academic year format and broken down by school and if possible by consultancy firm name although I appreciate the latter may not be possible.”
5. On 3 May 2022, the public authority responded. It confirmed that no records were held prior to 2020, and provided the information it held from 2020 onwards.
6. Following an internal review, the public authority maintained its position and confirmed that the names of schools were withheld under section 40(2) (personal information) of FOIA. It also apologised for the initial delay in providing its response.

## **Reasons for decision**

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

7. This reasoning covers whether the public authority was correct to apply section 40(2) of FOIA to the request.<sup>1</sup>
8. Section 40(2) says that information is exempt information if it is the personal data of another individual and disclosure would contravene one of the data protection principles. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable (directly or indirectly).
9. Based on the evidence provided by the public authority, the Commissioner is satisfied that the withheld information (the names of schools) could indirectly identify individual school governors, when considered in combination with other information which is publicly

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2000/36/section/40>

available. He therefore considers that the withheld information falls within the definition of 'personal data'.

10. In the case of a 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.
11. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary and whether these interests override the rights and freedoms of the individuals whose personal information it is.
12. The public authority has not provided any arguments to support its position that disclosure of the withheld information would be unlawful. However, the Commissioner considers he is able to reach a decision based on the information available to him.
13. The Commissioner considers that the complainant is pursuing a legitimate interest. This is because there is a broad legitimate interest in the public authority being transparent and accountable with regard to its spending of public money on school governor consultancy work. The Commissioner is satisfied that disclosure of the requested information is necessary to meet that legitimate interest.
14. However, the Commissioner considers that school governance is a voluntary role. There are only very limited circumstances in which a school governor would be paid. The individuals concerned would have a strong and reasonable expectation that information relating to their pay in these circumstances would remain confidential to them and their employer.
15. The Commissioner has determined that the fundamental rights and freedoms of the individuals outweigh the legitimate interest identified above. Therefore he considers that disclosing the requested information would be unlawful as it would contravene a data protection principle; that set out under Article 5(1)(a) of the UK General Data Protection Regulation. The public authority was therefore correct to apply section 40(2) of FOIA to this request.

## **Section 1 – general right of access to information**

16. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.

17. FOIA concerns recorded information only. It does not require a public authority to answer general questions, provide opinions or explanations.
18. In its initial response the public authority provided information for the years 2020, 2021 and 2022. It confirmed that the requested information was not held prior to 2020.
19. The complainant is not satisfied that the public authority has not provided the requested information for the years 2018 and 2019. He believes that there is a statutory requirement for the public authority to hold such financial records for this period of time.
20. However, the Commissioner has not been provided with any evidence to suggest that information is held prior to 2020. He is therefore satisfied that, on the balance of probabilities, the Council does not hold any further information within the scope of the request.

### **Procedural matters**

21. Under section 10(1) of FOIA a public authority must communicate non-exempt information within 20 working days of the request. Under section 17(1) it must issue a refusal notice in respect of any exempt information within the same timescale. In this case, the public authority did not provide relevant information or a refusal notice within 20 working days. It therefore breached section 10(1) and 17(1) of FOIA.

**Right of appeal**

22. 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)

23. 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.
24. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**