

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

### **Decision notice**

**Date:** 25 September 2023

**Public Authority:** Ashfield District Council

**Address:** Urban Road  
Kirkby-in-Ashfield  
Nottingham  
NG17 8DA

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

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1. The complainant requested from Ashfield District Council ('the council'), specific information about all of its employees. The council informed the complainant that some details are already published online. It therefore applied section 21 to this information. It withheld the remainder, applying section 40(2) of FOIA (personal data of third parties).
2. The Commissioner's decision is that the council was correct to rely on section 40(2) of FOIA to withhold the information.
3. The Commissioner does not require the council to take any steps.

## **Request and response**

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4. On 2 May 2023, the complainant wrote to the council and requested information in the following terms:

“Please all employee’s [sic] of Ashfield District Council, their name’s, job role’s, direct email addresses and yearly salaries.”
5. The council responded on 18 May 2023. It provided links to where some of the information on its senior staff could be found, and therefore applied section 21 to refuse to provide this under FOIA. It applied section 40(2) to withhold the remainder of the information.
6. Following an internal review council wrote to the complainant on 26 May 2023. It upheld its decision to apply sections 21 and 40(2) to refuse to provide further information to the complainant.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 27 June 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to consider whether the council was correct to apply sections 21 and 40(2) to withhold the information from disclosure under FOIA.
9. The Commissioner has not found it necessary to contact the council and ask for copies of the withheld information, nor its further arguments. This is due to the nature of the information requested, and the clear arguments provided by the council to the complainant in its response and internal review response.

## **Reasons for decision**

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### **Section 21 – information available by other means.**

10. Section 21 of the FOIA provides that information which is reasonably accessible to the applicant is exempt information. It is an absolute exemption which means that there is no requirement to carry out a public interest test if the exemption is engaged.
11. The purpose of section 21 is to protect the resources of public authorities. Public authorities do not have to expend resources disclosing information under FOIA when the requestor can easily access the

requested information from other sources. Section 21 also acts as an incentive for public authorities to be proactive in publishing information as part of their publication schemes.

12. In its initial response to the request the council provided the complainant with links to:
  - i. Its Pay Policy Statement 23/24, which provides details of its senior officers' names and salaries.
  - ii. an organisation chart detailing the names and roles of its senior officers.
  - iii. It explained that email addresses all follow the same structure; ([firstname.lastname@ashfield.gov.uk](mailto:firstname.lastname@ashfield.gov.uk)).
  - iv. It provided its central switchboard number and said officers could be contacted via this number.
13. Having considered the links provided, the Commissioner is satisfied that this information relating to parts i and ii of the request has been proactively published by the council, and that the council has provided the complainant with links to this information in response to his request for information. The information is therefore easily accessible to the complainant. Parts iii and iv provide the information necessary to respond to other requested information.
14. The Commissioner has therefore decided that the council was correct to apply section 21 to withhold the information outlined in parts i and ii.

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

15. This reasoning covers whether the public authority was correct to apply section 40(2) of FOIA to the remaining information falling within the scope of the complainant's request for information.
16. 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.
17. 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

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

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 General Data Protection Regulation ('GDPR').

18. 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.
19. 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 requested information personal data?***

20. The complainant has requested details the names, salaries, job roles and contact details for all of the council's employees. The Commissioner is therefore satisfied that the withheld information is personal data relating to the officers of the council.

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

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

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

22. 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.
23. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

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

24. 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>.

25. 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.
26. The complainant did not provide his reasons for requesting the information and therefore the Commissioner has not established whether he has a specific legitimate interest for requesting it beyond the general legitimate interests which the wider public has in information of this sort being made public; that of accountability and transparency.
27. The Commissioner has determined that the complainant, and the wider public, have a legitimate interest greater transparency over details about the numbers of staff, their roles, and salaries at Ashfield District Council. This affects how the council is run, its overall costs and whether it is able to meet its functions effectively.
28. These legitimate interests have partially been met by the publication of the information already disclosed by the council. Senior officers within the council are responsible for decision making, spending and the overall strategies of the council. Details of the overall costs of the council are provided within its annual budget reports. This weakens the arguments towards disclosure, however, in order to fully meet the terms of the request it would be necessary for the information to be disclosed in full.
29. The Commissioner must therefore balance the legitimate interests in disclosure against the fundamental rights and freedoms of the data subjects. In doing so, it is necessary to consider the impact of disclosure.

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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) provides that:-

*"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the 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".*

30. 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.
31. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
32. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will 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 acting in their public or private capacity, and the initial purpose for which they provided their personal data.
33. Having considered the nature of the requested information, the Commissioner is satisfied that the individuals would not have an expectation that their personal data would be disclosed in response to the request.
34. The Commissioner has balanced the legitimate interest which have been identified against the fact that the individuals concerned would have a reasonable expectation that their information would not be disclosed to the public.
- a) The Commissioner has identified that the public has a legitimate interest in understanding the costs of its staff, and how salaries are managed by the council. It also has a legitimate interest in knowing more about how the council is structured as this provides insight into whether its staffing structure is appropriate.
  - b) The requested information primarily relates to the individuals' public lives, but details of names and salary and roles also impinge upon their private lives.
  - c) The Commissioner considers that it is not necessary to have access all of the requested information in order to meet the legitimate interest in creating transparency and accountability.
  - d) Details of the overall cost of the council is disclosed in its accounts, and in response to this request, the council clarified that details relating to senior officers and its organisation chart are already publicly available.

- e) Information on Senior Officers roles and pay has already been published by the council. Senior Officers have a greater level of accountability to the public for their work, decisions, and management of public money. As such there is a greater expectation that information about them may be disclosed in response to a request. Less senior officers are accountable to the council, rather than to the public, and their performance and decision making is managed via the personal development and disciplinary processes.
  - f) Junior officers would not expect that their details, such as names, salaries job roles and contact details would be disclosed in response to an FOI request. Whilst they would expect that some of these details may be disclosed as part of their normal day-to-day business activities, they would not expect the entirety of the requested information to be disclosed in response to an FOI request. Such a disclosure would be far more intrusive as FOI disclosures are considered to be to the whole world.
  - g) Junior officers would also find it distressing that their information has been disclosed to the complainant in response to an FOI request. The Commissioner notes that providing details such as specific contact details to the whole world via a response to an FOI request risks unwanted contacts from organisations, individuals, and unwanted marketing calls and emails etc.
  - h) The Commissioner considers that the legitimate interests identified would not warrant the disclosure of personal details of lower grade staff as this would not be required in order to meet the legitimate interests which have been identified, bearing in mind the information which has already been disclosed or published by the council.
35. Based on the above factors, 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.
36. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he does not need to go on to separately consider whether disclosure would be fair or transparent.
37. Having found that the information is the personal data of a third party and that its disclosure would contravene principle (a), the conclusion of the Commissioner is that the exemption provided by section 40(2) of the FOIA is engaged and the council was not obliged to disclose the information in question.

## Right of appeal

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38. 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)

39. 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.
40. 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 .....**

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