

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

### **Decision notice**

**Date:** 4 November 2014

**Public Authority:** Brecon Beacons National Park Authority  
**Address:** Plas y Ffynnon  
Cambrian Way  
Brecon  
Powys  
LD3 7HP

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

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1. The complainant has requested various items of information regarding the departure details of the Park Authority's former Chief Executive. The Park Authority refused to provide the requested information by virtue of section 40(2) of the FOIA on the basis that they constituted the personal information of the data subject. The Commissioner's decision is that the Park Authority was correct to rely on section 40(2) of the FOIA and he does not require the Park Authority to take any steps.

### **Request and response**

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2. On 24 January 2014, the complainant wrote to the Park Authority and requested the following information in respect of its former Chief Executive:

*" 1. The date Mr C Gledhill left the Authority.*

*2 The reason Mr Gledhill left the Authority*

*3 The severance agreement terminating his employment.*

*4 The amount of severance payment given to Mr Gledhill.*

*5 Was a gagging order included in his severance agreement*

*6 If a gagging order was in place – why?*

*7 Were confidentiality clauses part of his severance agreement.*

*8 If confidentiality clauses exist – why were they put in place?*

*9 If confidentiality clauses exist – for how many years and how can they be broken?”*

3. The Park Authority responded on 5 February 2014. It provided the information in respect of item one of the request but refused to provide the remainder of the information in reliance on section 40(2) of the FOIA on the basis that the information constituted the personal data of the former Chief Executive and that disclosure would not be fair or lawful.
4. Following an internal review the Park Authority wrote to the complainant on 4 March 2014. It confirmed that the agreement was a Compromise Agreement as opposed to a Severance Agreement but upheld its original decision to refuse all but item one of the request by virtue of section 40(2) of the FOIA.

## **Scope of the case**

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5. The complainant contacted the Commissioner on 11 March 2014 to complain about the way her request for information had been handled. She believes that as the Welsh Government has provided her with much information due to the passage of time, the Park Authority should also do likewise. Additionally, the complainant has alleged that the Park Authority effectively put a gagging order on Mr Gledhill so he could not disclose “dirty tricks” that had occurred in regard to a failed planning application at Gilestone.
6. The Commissioner’s investigation has therefore considered whether the Park Authority was justified in its reliance on section 40(2) of the FOIA to refuse to disclose the information withheld at items 2 to 9 of the request.

## **Reasons for decision**

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

7. 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.

8. In order to reach a view regarding the application of this exemption, the Commissioner has firstly considered whether or not the requested information does in fact constitute personal data as defined by section 1(1) of the Data Protection Act 1998 ('the DPA').

**Is the requested information personal data?**

9. Personal data is defined at section 1(1) of the DPA as:

*"personal data means data which relate to a living individual who can be identified-*

*(a) from those data,*

*(b) from those data and other information which is in the possession of, or likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual."*

10. When considering whether the information is personal data, the Commissioner has taken into consideration his published guidance:

*"Determining what is personal data".<sup>1</sup>*

11. On the basis of this guidance, there are two questions that need to be considered when deciding whether disclosure of information into the public domain would constitute the disclosure of personal data:

*(i) "Can a living individual be identified from the data, or, from the data and other information in the possession of, or likely to come into the possession of, the members of the public?"*

*(ii) Does the data 'relate to' the identifiable living individual, whether in personal or family life, business or profession?"*

12. The Commissioner notes that the information withheld under this exemption concerns details of the termination of employment of the Park Authority's former Chief Executive, Mr C Gledhill, and as such constitutes his personal data.

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[http://www.ico.gov.uk/upload/documents/library/data\\_protection/detailed\\_specialist\\_guides/what\\_is\\_data\\_for\\_the\\_purposes\\_of\\_the\\_dpa.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/what_is_data_for_the_purposes_of_the_dpa.pdf)

13. The Park Authority considers that disclosure of the disputed information would breach the first data protection principle.

**Would disclosure contravene the first data protection principle?**

14. The first data protection principle requires that the processing of personal data be fair and lawful and,
- a. at least one of the conditions in schedule 2 is met, and
  - b. in the case of sensitive personal data, at least one of the conditions in schedule 3 is met.
15. In the case of personal data, both requirements (fair and lawful processing, and a schedule 2 condition) must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing will not be in accordance with the first data principle.

*Would disclosure be fair?*

16. In his consideration of whether disclosure of the withheld information would be fair, the Commissioner has taken the following factors into account:
- a. The reasonable expectations of the data subjects.
  - b. Consequences of disclosure.
  - c. The legitimate interests of the public

*The reasonable expectations of the data subject*

17. The Commissioner's guidance regarding section 40 suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private life.<sup>2</sup> Although the guidance acknowledges that there are no hard and fast rules it states that:

*"Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone*

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<sup>2</sup>[http://www.ico.gov.uk/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_speci alist\\_guides/PERSONAL\\_INFORMATION.ashx](http://www.ico.gov.uk/~media/documents/library/Freedom_of_Information/Detailed_speci alist_guides/PERSONAL_INFORMATION.ashx)

*acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned."*

18. The Commissioner's guidance therefore makes it clear that where the information relates to the individual's private life (i.e. their home, family, social life or finances) it will deserve more protection than information about them acting in an official or work capacity (i.e. their public life). However, not all information relating to an individual's professional or public role is automatically suitable for disclosure.
19. The Commissioner considers the seniority of the data subject is an important factor when considering their reasonable expectations, and in his view, the more senior a person is, the less likely it will be unfair to disclose information about him or her acting in an official capacity.
20. However, the Commissioner also recognises that there is a widespread and general expectation that details of a person's employment should be considered confidential.
21. In this particular case, with the exception of item four of the request which has been considered separately under paragraphs 24 to 25 of this notice, the information that the complainant seeks consists of material which is not usually available to the public and the Commissioner acknowledges the general expectation of privacy in respect of the details regarding the termination of a person's employment. Indeed, this has been affirmed in the Tribunal case of *Trago Mills (South Devon) limited v IC and Teinbridge District Council, EA/2012/0028*. The Tribunal upheld the Commissioner's decision that disclosure of the details of a severance agreement would be unfair and therefore contravene the first data protection principle. It stated that:

*"Even without an express confidentiality provision, an individual would have a reasonable expectation that the terms on which his employment came to an end would be treated as confidential. The question we have to consider is, not whether X's severance package was a private transaction(it clearly was), but whether the factors in favour of disclosure would not have represented an unwarranted interference with that right."*

22. The Commissioner has considered the seniority of Mr Gledhill as the former Chief Executive of the Park Authority. He also notes that his departure was discussed in the local media at the time, although the actual details remained confidential. However, the Commissioner is mindful that even amongst senior members of staff, there would still be a high expectation of privacy regarding details of their termination of employment.

23. The Commissioner has also considered the complainant's allegation that Mr Gledhill has provided her with details in respect of some of the terms of his departure from the employment of the Park Authority. However, he notes that although the Park Authority requested evidence of this, it was not provided. The Commissioner has therefore seen no evidence which suggests that Mr Gledhill has put details of his departure from the Park Authority in the public domain, and has concluded that the reasonable expectations of Mr Gledhill would be that these details remain confidential.

Item 4 – the amount of severance payment...

24. The Commissioner's guidance on requests for personal data about public sector employees<sup>3</sup> states that:

*"Employees' expectations as to what information will be released will have to take account of statutory or other requirements to publish information. For example, the Accounts and Audit Amendment no 2) (England) Regulations 2009 require local authorities, fire and police authorities and certain other bodies in England to publish in their annual accounts the amounts paid to employees in connection with the termination of their employment, if their total remuneration is over £50,000. These amounts are published by job title if the total remuneration is between £50,000 and £150,000 and by name if it is over £150,000. However, this legislation only directly affects reasonable expectations regarding the actual amounts of money paid out, and only for those particular authorities. Reasonable expectations in other contexts may differ, but it should be recognised that there is an increasing public expectation of transparency regarding the expenditure of public money and the performance of public authorities. This is especially the case if there is any evidence of mismanagement by senior staff in a public authority."*

25. The Commissioner notes that similar requirements under Section 7(3) of the Accounts and Audit (Wales) (Amendment) Regulations 2010 are applicable to Welsh local authorities and other public bodies in Wales, including National Park Authorities. However, he is mindful that these amendments post-date the departure of Mr Gledhill as the Chief Executive of the Park Authority (3 December 2008), and as such, the Commissioner considers that Mr Gledhill would reasonably expect that

this aspect of his termination of employment would also remain confidential.

### *Consequences of disclosure*

26. The Commissioner's guidance regarding the disclosure of information about employees states that:

*"Disclosure is unlikely to be fair if it would have unjustified adverse effects on the employees concerned. Although employees may regard the disclosure of personal information about them as an intrusion into their privacy, this may often not be a persuasive factor on its own, particularly if the information relates to their public role rather than their private life."*

27. The Commissioner acknowledges that the information concerns details of the termination of employment of the former Chief Executive, and he is mindful that the disclosure of this type of information has the potential to cause considerable distress to the data subject, particularly as it followed his suspension while an investigation was undertaken to consider questions about the Park Authority's leadership.

### *The legitimate public interest in disclosure*

28. Notwithstanding the data subjects' reasonable expectations, or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure.
29. The Commissioner notes that the complainant has a personal interest in obtaining this information as she considers it relevant to her case against the Park Authority's conduct in respect of a failed planning application in 2008. The Commissioner also notes the general legitimate public interest in the disclosure of details regarding the termination of employment of its former Chief Executive.
30. In weighing up the balance between the reasonable expectations of the data subject and the consequences of disclosure of the disputed information against the legitimate public interest in disclosure, the Commissioner has concluded that the balance is weighted in favour of non-disclosure. Consequently, he is satisfied that the Park Authority appropriately withheld the disputed information on the basis of section 40(2) of the FOIA.

## Right of appeal

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31. 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)

32. 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.
33. 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 .....**

**Anne Jones**  
**Assistant Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**