

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 October 2015

Public Authority: Chairman Duxford Parish Council

Address: 2 Mangers Lane
Duxford
Cambridge
CB22 4RN

Decision (including any steps ordered)

1. The complainant has requested copies of emails sent to Duxford Parish Council's former Chairman. The Council has withheld these emails in reliance on section 40(2) of the FOIA.
2. The Commissioner's decision is that the Council has appropriately applied the exemption provided by section 40(2) and it is therefore entitled to withhold the requested information.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. On 21 March 2015, the complainant wrote to Duxford Parish Council ("the Council") and requested information in the following terms:

"As confirmed by the email from [a named police officer], she received copies of the individual written reports which are being claimed to be the basis of the subsequent actions of the Artist – Formerly known as Chairman John.

Since these documents form part of the written documentation relating to the DPCFDC Meeting of March 9th, and which subsequently resulted in Police visits on March 18th, I repeat my request to receive copies of those reports immediately..."

5. The Council responded to the complainant's request, also on 21 March, by informing him that, "I have no intention of supplying you with the private notes to John from other councillors".
6. The complainant wrote again to the Council on 25 March. In his email the complainant re-asserted his contention that the documents are public property and part of the written record of what the minutes of the meeting contain.
7. On 7 April, the Council responded to the complainant's email by informing him that, "It is still our view that private notes to the ex-Chairman are not public property".
8. On 20 April, the Council provided the complainant with information contained in the withheld documents. The disclosed information comprises the complainant's personal data and the Council's response to his complaint which referenced the Data Protection Act 1998.
9. On 15 June, following the intervention of the Information Commissioner's Office, the Council issued a refusal notice to the complainant under section 17 of the FOIA. The Council confirmed to the complainant that it holds information relevant to his request. This information comprises a number of emails which passed between its then Chairman and members of its Facilities Development Committee, including Councillors and the Clerk.
10. The Council advised the complainant that any personal references contained within the correspondence had already been forwarded to him. The Council also advised the complainant that the remainder of the information within the documentation is exempt from disclosure under section 40(2) of the FOIA; as it would identify third parties.

Scope of the case

11. The complainant contacted the Commissioner on 9 March 2015 to complain about the way his request for information had been handled.
 12. The focus of the Commissioner's investigation was to determine whether Duxford Parish Council is entitled to rely on section 40(2) of the FOIA as a basis for refusing to disclose the withheld information. This notice sets out the Commissioner's decision.
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Reasons for decision

Background Information

13. The Commissioner understands that the complainant's request flows from a meeting of the Council's Facilities Development sub-committee which was held on 9 March 2015. The meeting was allegedly disrupted by some of those in attendance and consequently, following a visit by a police officer, advice was given to 2 people about their behaviour. The advice given was that the police would have to pursue a complaint if their behaviour was repeated.
14. The former Parish Council Chairman did not attend the meeting of the Facilities Development sub-committee. A few days afterwards, and before the next meeting of the full Parish Council, the former Chairman wrote to members of the sub-committee to obtain their views about the behaviour which had been reported to him.
15. At the next meeting of the Council the Chairman mentioned that he had received emails from Councillors. The Chairman then resigned his position and subsequently called the Police and Press.

Section 40(2) – the personal data of a third party

16. The Council has relied on section 40(2) of the FOIA to withhold the emails sent by its former Chairman and Councillors.
17. Section 40(2) provides an exemption from the duty to disclose recorded information where the information is the personal data of any third party and where disclosure would breach any of the data protection principles contained in the Data Protection Act 1998 ("the DPA") or section 10 of that Act.
18. The Commissioner has examined the withheld information and has found it to comprise of a number of emails which passed between the Council's former Chairman and certain Councillors. The emails contain the names to other persons – third parties, and statements of opinion about them.
19. The Commissioner has decided that the withheld information is the personal data of the Council's former Chairman and the Councillors. He has also decided that the emails contain the personal data of the third parties who are referred to in the emails.
20. The Commissioner must now consider whether disclosure of the requested information would breach any of the data protection principles contained in Schedule 1 of the DPA. He considers that the first data protection principle is the one most relevant in this case.

The first data protection principle

21. The first data protection principle has two components:
1. Personal data must be processed fairly and lawfully, and
 2. Personal data shall not be processed unless one of the conditions in Schedule 2 of the DPA is met.

The Council's representations

22. The Council strongly asserts that the emails were intended to be 'off the record' private replies, to the former Chairman's invitation for Councillors to express their views about the behaviour at the meeting.
23. The Councillors who responded to the invitation have advised the Parish Council Clerk that they would not have written their replies if they were likely to be disclosed to the world.
24. The Councillors have stressed that the former Chairman did not ask their permission for him to refer to them or use their emails in any way. The actions taken by the former Chairman took place after he had resigned and therefore he was acting in a private capacity rather than as an elected councillor.
25. In the Council's opinion disclosure of the emails to the world would be of no benefit to anyone: Rather, it would be an intrusion into the rights of privacy for the senders and receivers involved and to the persons referenced in the emails.

The Commissioner's conclusions

26. In order to determine whether disclosure of the emails would be unfair to the data subjects – the senders and recipients of the emails together with the persons referenced in them, the Commissioner has considered what might be their legitimate expectations of privacy in respect of the withheld emails.
27. In the Commissioner's opinion it is a widely recognised principle that a person's correspondence is private and confidential.
28. The Commissioner accepts that the emails do concern council-related matters – behaviour at its meetings, and therefore the contents of the emails is not strictly 'private' correspondence. That said, the Commissioner does not accept the complainant's assertion that the emails form part of the written documentation of the particular meeting: At best the emails are ancillary documents.

29. The key factor in this matter must be the Council's position which is outlined above at paragraphs 23 – 25: The Commissioner must give weight to the 'off the record' expectations which the Councillors concerned have expressed. He must also consider the potential chilling effect on the Council that disclosure of the emails would likely have. He is also obliged to give significant weight to the fact that the Councillors concerned have purposefully refused to consent to their emails being made public.
30. The Commissioner must recognise that the emails contain references to persons other than the complainant: In the Commissioner's opinion these persons would not expect their personal data to be made public by virtue of the complainant's request.
31. Taking into consideration all of the above, the Commissioner has decided that disclosure of the emails would be unfair and would contravene the first data protection principle. Having reached this conclusion the Commissioner is not required to consider whether any of the conditions of Schedule 2 of the Data Protection Act 1998 could be met to allow disclosure.
32. Notwithstanding this, the Commissioner has considered the actions already taken by the Council in respect of its disclosure to the complainant of his personal data under the provisions of the Data Protection Act.
33. The complainant is unquestionably entitled to receive his personal data. The Commissioner is satisfied that that has been provided to him.
34. The Consequence of disclosing the complainant's personal data to him, is that the necessity for the emails themselves to be disclosed to the public in their entirety is significantly diminished.
35. Having spoken with the complainant, it is apparent to the Commissioner that he is seeking disclosure of the emails in order to protect his own reputation. In the Commissioner's opinion protecting the complainant's reputation is not sufficient to for him to find that disclosure would not be an unwarranted intrusion into the privacy of the Councillors and the other persons mentioned in the emails.
36. The Commissioner's decision is that the Council is entitled to withhold the requested emails by virtue of the exemption to disclosure provided by section 40(2) of the FOIA.

Right of appeal

37. 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

38. 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.
39. 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

Andrew White
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