

Freedom of Information Act 2000 (Section 50)

Decision Notice

23 June 2011

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

Summary

The complainant requested from Cornwall Council (the council) various information regarding the redundancy/pension enhancements paid to the outgoing Chief Executives of the county and district councils in Cornwall and also the annual salaries of council staff earning £65,000 and over. The Commissioner finds that section 40(2) of the Freedom of Information Act 2000 (the Act) is engaged in respect of the redundancy/pension enhancements paid to the outgoing Chief Executives as disclosure of these individuals' personal data would be unfair. However, the Commissioner requires further the council to disclose further information about staff salaries in respect of certain senior staff.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. Cornwall Council (the council) is a unitary council that was created on 1 April 2009¹ by merging Cornwall County Council and the six borough and district councils in Cornwall, namely Caradon, Carrick, Kerrier,

¹ See The Cornwall (Structural Change) Order 2008 - <http://www.legislation.gov.uk/ukxi/2008/491/introduction/made>

North Cornwall, Restormel and Penwith². Following the merger, the County Councils and four of the six borough and district councils' Chief Executives received redundancy/compensation payments. The remaining two Chief Executives left voluntarily and as a result did not qualify for or receive any redundancy payments.

The Request

3. On 17 February 2010 the complainant requested the following information from the council under the Act:
 - 'a. How much did each of the District Council Chief Executives receive in redundancy/pension enhancement when the Districts were abolished in 2009 (please specify which Council and the name of each Chief Executives and the amounts).*
 - b. Similar information please on the outgoing CE of Cornwall Council – (name deleted)?*
 - c. Please provide names, job titles and salaries of any CC employees currently earning £65k or more and details of their previous salary if employed by CCC/CC.*
 - d. Please provide salary details of the Council Chief Executive and of any other benefits he receives (eg relocation, school fees, car/car allowance, private health care, bonus etc)*
 - e. Did any CCC employees receive a redundancy payment when CCC was abolished and have been subsequently re-employed/retained as consultants or similar by CC. Please give full details if so'.*
4. On 10 March 2010 the council responded and said that the cost of answering questions 'c' and 'e' would individually exceed the appropriate limit of £450. It therefore invited him to narrow his request by possibly reducing the number of staff in respect of question 'c' and council departments in respect of question 'e'.
5. On 17 March 2010 the complainant said that he was content not to know the salaries and details of any council employees employed within its schools earning £65,000 or more (probably Heads/some Deputy Heads). However, he said that he still required all the other information specified in his request dated 17 February 2010.

² See the 'Local Government Re-organisation 2009'
<http://www.places.communities.gov.uk/NewAuthorityGuidance.html>

6. On 19 March 2010 the council said that it would speak to its Human Resources Service in respect of question 'e' and enquired as to whether the complainant would be willing to accept details of the job titles of its officers but not their previous salaries in respect of question 'c'.
7. On 21 March 2010 the complainant responded and said that while he was happy to narrow his request in respect of question 'c' to exclude employees who worked in schools he still wanted the names, job titles and previous salaries of everyone else.
8. On 14 April 2010 (following a reminder from the complainant on 30 March) the council issued its response to the refined information request. In respect of questions 'a' and 'b' it withheld the information under section 40(2) of the Act on the grounds that disclosure of third party personal information would be unfair and unlawful. In respect of question 'c' it disclosed a spreadsheet showing the job titles and some names of staff earning £65,000 and over but not the salaries. In respect of question 'd' it said that the Chief Executives salary was £200,000 with no benefits. In respect of question 'e' it provided the requested information from its computerised Payroll system.
9. On 19 April 2010 the complainant wrote to the council expressing his dissatisfaction with its response. In respect of its response to questions 'a' and 'b' he stated his belief that the public's right to know outweighed the council's considerations. In respect of the response to question 'c' he pointed out that he had already narrowed down his request and therefore required all of the relevant information. In respect of the response to question 'd' he questioned whether it was correct that the Chief Executive received no benefits.
10. On 12 May 2010 the council wrote to the complainant with the outcome of its internal review. It upheld its original response in respect of questions 'a' and 'b'. In respect of question 'c' it said that it had provided details of its existing staff earning £65,000 and over but added that to provide details for previous salaries would exceed the appropriate limit of £450. In respect of question 'e' it clarified that the Chief Executive was a member of its final salary scheme, was subject to the standard severance arrangements and only received reimbursement for business mileage.
11. On 13 and 25 May 2010 the complainant wrote to the council indicating his dissatisfaction with its answers to questions 'a', 'b', 'c', and 'd'.

The Investigation

Scope of the case

12. On 11 June 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
13. During the course of the Commissioner's investigation the complainant agreed to withdraw his complaints in respect of questions 'd' and 'e' as the information disclosed by the council had satisfied these.

Chronology

14. On the 8 June 2010 the Commissioner contacted the council and requested the withheld information within 20 working days.
15. On 16 June 2010 the council responded and said the only information it had withheld was in respect of questions 'a' and 'b' to which it had applied section 40(2) of the Act. However, it added that it did not want to disclose the information to the Commissioner at this stage as it did not believe it was necessary for his investigation. It referred to a previous Decision Notice issued by the Commissioner involving a similar request and pointed out in that case the Commissioner did not require sight of the requested information. It pointed out that the case was recorded under reference FS50265250 (24 May 2010) and involved a request for the redundancy details paid to the outgoing Chief Executive of Cornwall Council which the council had withheld under section 40(2) of the Act. In this case the Commissioner upheld the council's decision.
16. On 13 July 2010 the Commissioner wrote to the complainant asking him to clarify the scope of his complaint as it would appear that the council has answered questions 'd' and 'e'.
17. On 26 July 2010 the complainant acknowledged the Commissioner's communication and said he would respond in detail once he had had an opportunity to consider the matter in more detail.
18. The Commissioner wrote to the complainant again on 27 July and 23 August requesting a response to which the complainant sent a reply on 27 August saying that he was still reviewing the position.
19. In the absence of a reply the Commissioner wrote to the complainant again on 10 December 2010 requesting his comments regarding the scope of his complaint.

20. After exchanging a number of emails with the Commissioner over a period of a couple of months the complainant confirmed in a communication dated 21 February 2011 that he no longer wished to pursue his complaint in respect of questions 'd' and 'e'.
21. On 9 February 2011 the Commissioner wrote to the council and requested copies of the withheld information, details of any references in the public domain to any payments made to the ex-Chief Executives employed by Cornish councils and its further arguments in relation to sections 12 and 40(2) of the Act which it had applied to question 'c'. In relation to question 'c' the Commissioner suggested that it should be possible for the council to locate, retrieve and extract the requested information within the prescribed limit as some of it had already been published by it in its annual accounts and on its website.
22. After a further exchange of emails between the council and the Commissioner, the council provided copies of the withheld information and public domain references to payments made to Chief Executives. In relation to question 'c' the council indicated that it would no longer rely of section 12 of the Act and on 10 March 2011 disclosed a spreadsheet listing the names, job titles and £5,000 salary scales of council employees earning £65,000 and more and the spot salaries of some higher earning council employees. It did not however, disclose the exact salaries for the relevant staff.
23. On 11 March 2011 the Commissioner wrote to the complainant with copy of the spreadsheet disclosed by the council and asked him whether it would satisfy question 'c' of his information request. The complainant responded on the same day to say that it would not as he still required disclosure of the exact salaries rather than £5,000 salary bands.
24. On 4 April 2011 the Commissioner asked the council to clarify a number of issues relating to the ex-District Council Chief Executives and reminded it of its obligations to disclose the salaries of senior employees under the Accounts & Audit Regulations 2003 (as amended). He also pointed out that one of the exact senior salaries withheld by the council was in fact listed in the council's annual accounts for 2009/10.
25. On 18 and 20 April 2011 the council provided the Commissioner with the further information requested.

Analysis

Exemptions

Section 40(2)

26. The full text of the relevant provisions of the Act referred to in this section is contained within the Legal Annex.
27. Section 40(2) provides an exemption for information which is the personal data of an individual other than the applicant and where one of the conditions listed in section 40(3) is satisfied.
28. One of the conditions listed in section 40(3)(a)(i), is where the disclosure of the information would contravene any of the principles of the Data Protection Act 1998 ('the DPA').

Is the information 'personal data'?

29. In order to rely on the exemption provided by section 40, the information being requested must constitute the personal data as defined by section 1 of the DPA. Personal data is defined as:

"...data which relate to a living individual who can be identified-

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual."

30. The Commissioner has viewed the withheld information and is satisfied that it relates to identifiable living individuals, in this case the outgoing Chief Executive of the former Cornwall County Council, the Chief Executives of the associated District Councils in Cornwall and the council's employees earning more than £65,000. The Commissioner accepts that an individual's redundancy, pension enhancement and salary paid by their employer is the individual's personal data as defined by the DPA.
31. Having concluded that the information falls within the definition of 'personal data' the Commissioner has gone on to consider if disclosure of the information would breach the requirements of the first data protection principle which states:
- "Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-*
- (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 also met."*
32. The term 'processing' has a wide definition and includes disclosure of the information under the Act to a third party.

Would disclosure of the information be fair?

33. In considering whether disclosure of the individual's personal data would contravene the first data protection principle the Commissioner will firstly consider whether disclosure of the information would be fair. In considering this, he will take into account the reasonable expectations of the data subjects and balance these against the legitimate interests of the public in knowing details of the various Chief Executives' redundancy/pension packages and the exact salaries paid to council employees in accordance with the general principles of accountability and transparency by public authorities. This approach was approved by the First Tier Tribunal – General Regulatory Chamber (Information Rights) in the case of Pycroft and the Information Commissioner EA/2010/0165.
34. The Commissioner will consider the question of fairness in relation to the disclosure of the ex-Chief Executives' and council employees' personal data separately.

The former Chief Executives

35. Questions 'a' and 'b' of the complainant's information request dated 17 February 2010 requested details of the redundancy/pension enhancements paid to the former district and county councils together with their identity where not specified.
 36. The council has refused to disclose this information under section 40(2) of the Act
 37. To guide him in weighing up the competing interests of the data subjects reasonable expectations with legitimate interests of the public, the Commissioner has taken into account the following factors:
 1. The consequences of disclosure
 2. The data subjects' reasonable expectations of what would happen to their personal data
 3. The existence and terms of a compromise agreement or arrangement suggesting mutual confidentiality
 4. Whether the requested information relates to the individuals' personal/private lives or public roles
 5. The seniority of the individuals' positions and the importance role of their roles
 6. The balance between the rights and freedoms of the data subject and the legitimate interests of the public
- **The consequences of disclosure**
 38. In this case, the council has indicated that disclosure of the requested information would cause distress to the individuals concerned and furthermore it has argued that the individuals' personal financial circumstances legitimately and reasonably deserved some protection. The Commissioner recognises that the release of the information would be an intrusion into the financial circumstances of the individuals in question. He therefore believes it more than probable that disclosure would cause some distress to the data subjects.
 - **Reasonable expectations**
 39. An individual's reasonable expectation as to whether their personal data will be disclosed is a relevant factor. However, in the absence of other factors disclosure will not be automatically unwarranted or unfair just because the person is unaware of the possibility of disclosure. The

Commissioner considers that the individuals concerned would have a reasonable expectation that the requested information, which relates to their personal financial arrangements with the council and the financial circumstances of their retirement, would remain private. This view is supported by the fact that the settlements were made on a confidential basis with one of the ex-Chief Executives signing a compromise agreement with a confidentiality clause.

- **Compromise agreement/or other arrangement regarding confidentiality**

40. In the present case only the ex-Chief Executive of Cornwall County Council signed a compromise agreement. The other four individuals did not although it was understood that details of their redundancy/pension enhancements would remain private.

Compromise agreement and previous similar Decision Notice

41. The Commissioner has noted and referenced his previous Decision Notice in the case of Cornwall Council (FS50265250–24 May 2010) where the complainant requested information very similar to that in the present case in relation to the redundancy package paid to Cornwall County Council's outgoing Chief Executive. (The individual in that case was the same as the one in this case). In the previous case the Commissioner concluded that disclosure of component payments and structure of the redundancy package would be unfair and cause distress to the data subject. (See paragraph 52).
42. The Employment Rights Act 1996 established the opportunity for parties to reach a compromise agreement and has built safeguards into the process to ensure employees receive independent and accountable legal advice before entering in to such agreements.
43. The Commissioner considers that compromise agreements play an important role in employer/employee relationships. They avoid the time, expense and stress of litigation in an Employment Tribunal when an employer/employee relationship comes to an end. Such agreements provide the opportunity to conclude the relationship in private and allow both parties to make a fresh start if they choose. In this case, indications of the Council's intentions towards the Chief Executive's employment, details of the departure and any payment(s) made are included in the compromise agreement.
44. The Commissioner notes that in sections 11 and 12 of the compromise agreement there are confidentiality clauses which are binding on both parties. Although it does not specify an agreed position in the event of a request under the Act, the Commissioner considers that the clause

could be read widely enough to cover disclosure of the withheld information.

45. The Commissioner also considers that the right to access official information and the right to reach an equitable compromise in private when an employer/employee relationship comes to an end are not mutually exclusive. However, where a compromise agreement has been reached between a Council and a senior employee of that Council, a balance has to be struck between the public authority's duty to be transparent and accountable about how and why it decided to spend public money in a particular way, and its duty to respect its employees' reasonable expectations of privacy.
 46. In this case the Commissioner is satisfied that the compromise agreement signed by the outgoing Chief Executive of Cornwall County Council gave rise to an expectation that details of the redundancy/pension enhancement would remain private.
 47. The Commissioner is also satisfied that, even in the absence of a specific compromise agreement with a confidentiality clause for the four ex-Chief Executives of the former district/borough councils in Cornwall, there was an assumed right to privacy between the individuals concerned and council concerning matters of a personal financial nature.
- **Personal and private or public life**
48. The Information Commissioner's Office has produced Awareness Guidance on section 40 of the Act³ which makes it clear that where the information relates to the individual's private life (i.e. their home, family, social life or finances) as opposed to their public life (i.e. their work as a public official or employee) it will deserve more protection than information about them acting in an official or work capacity. The Commissioner takes the view that information relating to an individual's redundancy/pension enhancement relates more to their private as opposed to public life. See the decision of the First-tier Tribunal in the case of Pycroft and the Information Commissioner EA/2010/0165⁴.

3

http://www.ico.gov.uk/for_organisations/sector_guides/~/_media/documents/library/Freedom_of_Information/Detail_ed_specialist_guides/personal_information.ashx

4

http://www.informationtribunal.gov.uk/DBFiles/Decision/i483/20110211_Pycroft_v_IC_and_SDC_open_decision_EA_20100165.pdf

Seniority and roles

49. The above Awareness Guidance on section 40 of the Act⁵ also makes it clear that public authorities should take into account the seniority of employees when personal information about their staff is requested under the Act. The more senior a person is, the less likely it is that disclosing information about their public duties will be unwarranted or unfair. Information about a senior official's public life should generally be disclosed unless it would put them at risk or unless it also reveals details of the private lives of other people (e.g. the official's family). See the decisions of the First Tier Tribunal – General Regulatory Chamber (Information Rights) in the cases of *Ince v Information Commissioner EA/2010/0089*, and *Pycroft and the Information Commissioner EA/2010/0165*.
50. In this case all of the individuals concerned are very senior as they are former local authority Chief Executives. However, the Commissioner considers that their seniority is less relevant in this case as the requested information relates to their redundancy/pension enhancements. Furthermore, in this case the withheld information goes beyond information directly concerning the individuals' public roles or decision making process and relates to their personal finances. Although the information relates to the individuals' employment (in the sense that it is payment for service), it is not information so directly connected with their public role that its disclosure would automatically be fair. The Commissioner considers that these are essentially private issues.

• The rights and freedoms of the data subjects

51. As mentioned above the individuals within the scope of the complainant's request would have a reasonable expectation that the private and confidential information relating to their personal finances would remain private with disclosure leading to likely distress.
52. The complainant has not produced any persuasive or strong evidence that the former Chief Executives who received redundancy/enhanced pension terms within the time frame of his request did so under circumstances of alleged wrongdoing and/or malpractice. However, he has made reference to information in the public domain published by

⁵

http://www.ico.gov.uk/for_organisations/sector_guides/~/_media/documents/library/Freedom_of_Information/Detail_ed_specialist_guides/personal_information.ashx

the Audit Commission on 16 March 2010⁶ and associated press articles regarding severance payments made to council chief executives.

53. In the present case the Chief Executive redundancies were largely brought about by the Local Government Re-organisation of 2009⁷ when the six county, district and borough councils in Cornwall were merged to form the new Unitary Authority of Cornwall Council.

- **The legitimate interests of the public**

54. The Commissioner recognises that that the council has a duty to be open, transparent and accountable in relation to how it spends public money. This includes ensuring that any redundancy/pension enhancements paid to members of staff are calculated in accordance with agreed rules and are accounted for in the council's annual accounts.
55. The complainant believes that any redundancy/pension enhancement paid to former council Chief Executives should be published to allow adequate public scrutiny.
56. In relation to the above points the Commissioner notes that the redundancy costs incurred by the six county, district and borough councils in Cornwall that were merged to form the new Unitary Council were recorded in the respective council's annual Statement of Accounts as 'exceptional payments' as a result of the LGR in 1999. Pension payments are calculated in accordance with the Local Government Pension Scheme rules. Redundancy payments are calculated in accordance with the established and recognised rules under the Local Government (Early Terminations of Employment) (Discretionary Compensation) Regulations 2006.

Conclusion

57. The Commissioner finds that there are strong reasons for the requested information being withheld in this case. It is likely that any disclosure would cause distress to the individuals concerned who would have a reasonable expectation that information relating to their personal circumstances would remain private. This is particularly so where a compromise agreement has been signed as is the case for one individual. However, even where no compromise agreement has been

⁶ 'By mutual agreement – Severance payments to council chief executives' <http://www.audit-commission.gov.uk/sitecollectiondocuments/downloads/20100315bymutualagreementrep.pdf>

⁷ See the 'Local Government Re-organisation 2009' <http://www.places.communities.gov.uk/NewAuthorityGuidance.html>

signed the council has made it clear that the redundancy/pension enhancements were made on a private and confidential basis. The Commissioner believes that the redundancy/pension enhancements in this case relate more to the individuals' private life than their public duties and although it is accepted that the individuals concerned were very senior employees, being Chief Executives, this is less relevant in this case as the information requested is not directly connected with their public role. The Commissioner has not been presented with any arguments or evidence that the individuals concerned committed any wrong doing or malpractice.

58. The Commissioner recognises that there is a public interest in the council being seen to be open, transparent and accountable in relation to how it spends public money. This includes the way it calculates any redundancy/pension enhancements it makes to staff who leave/retire. In this case the Commissioner accepts that there are adequate systems in place to ensure that payments made are calculated fairly and accounted for appropriately. The council makes payments in accordance with individual's employment contracts and has a defined policy for calculating redundancy awards. Pensions are calculated in accordance with the Local Government Pension Scheme rules and these payments (including any enhanced ones for early retirement) are accounted for in the council's annual accounts.
59. The Commissioner has balanced the consequences of any release of the individual's personal data in this case, taking into account their reasonable expectations of privacy, with the general principles of accountability and transparency required by the council and concluded that it would be unfair for the information to be disclosed for the above reasons. Accordingly, he has not gone on to consider lawfulness or the Schedule 2 conditions of the DPA.

Council staff earning £65,000 and over

60. Question 'c' of the complainant's information request dated 17 February 2010 asked for the names, job titles and salaries of any council employees earning £65,000 or more and details of their previous salaries if employed by the former county council.
61. During the Commissioner's investigation the council has disclosed all of the information requested in question 'c' with the exception of some of the exact or spot salaries which it has redacted under section 40(2) of the Act. Where it has refused to disclose the exact salaries it has disclosed the salaries in bands of £5,000.

62. To guide him in weighing up the competing interests of the data subjects reasonable expectations with legitimate interests of the public, the Commissioner has taken into account the following factors:
1. The Accounts and Audit Regulations 2003 as amended by the Accounts and Audit (Amendment No. 2) (England) Regulations 2009)
 2. The consequences of disclosure
 3. The data subjects' reasonable expectations of what would happen to their personal data
 4. Whether the requested information relates to the individuals' personal/private lives or public roles
 5. The seniority of the individuals' positions and the importance role of their roles
 6. The balance between the rights and freedoms of the data subject and the legitimate interests of the public
- **The Accounts and Audit Regulations 2003 as amended by the Accounts and Audit (Amendment No. 2) (England) Regulations 2009**⁸
63. Regulation 7 of the Accounts and Audit Regulations 2003 (as amended by Regulation 4 of the Accounts and Audit (Amendment No. 2) (England) Regulations 2009) which came into force 6 weeks after the complainant's request on 31 March 2010, requires a public authority to state in a note accompanying its annual Statement of Accounts the remuneration paid to certain council employees. The Commissioner therefore believes that as these Regulations had already been published and their implementation was imminent at the date of the complainant's request, the employees to whom they applied would have a reasonable expectation that certain information regarding their salaries might be disclosed in response to a freedom of information request.
64. The above Regulations require councils to disclose various levels of information relating to senior employees' salaries. For example, senior employees earning £150,000 or more must have their names, job

⁸ The Accounts and Audit Regulations 2003 (as amended) were replaced on 31 March 2011 by The Accounts and Audit (England) Regulations 2011

titles and salaries published whereas a certain number of defined senior employees earning less than that but £50,000 or more must have their job descriptions and salaries published. For example, the Monitoring Officer appointed under S.5(1) of the Local Government and Housing Act 1989.

- **The consequences of disclosure**

65. In this case, the council has indicated that disclosure of the requested information over and above that required by the Accounts and Audit Regulations 2003 (as amended) would cause distress to the individuals concerned. The Commissioner recognises that the complete disclosure of the requested information would be an intrusion into the financial circumstances of some of the individuals in question. He therefore believes it more than probable that disclosure would cause some distress to some of the data subjects.

- **Reasonable expectations**

66. An individual's reasonable expectation as to whether their personal data will be disclosed is a relevant factor. However, in the absence of other factors disclosure will not be automatically unwarranted or unfair just because the person is unaware of the possibility of disclosure. The Commissioner considers that the individuals concerned would have a reasonable expectation that some information relating to their salaries would be disclosed in response to an information request and the level of this disclosure would be determined by the imminent implementation of the Accounts and Audit Regulations 2003 (as amended) 6 weeks after the complainant's information request. For example, their annual salary in bands of £5,000 and in the case of senior employees defined by the Accounts and Audit Regulations 2003 (as amended), their exact salaries. However, the Commissioner also believes that the level of that disclosure will vary according to the individual's salary, role and responsibilities and also the requirements of the Audit and Accounts Regulations 2003 (as amended). See the Commissioner's decision in the case of Ferryhill Town Council (FS50195769) which was upheld by the Information Tribunal in decision (EA/2009/0054).

67. The Commissioner has also taken into account the Information Tribunal's decision in the case of Brian Gibson and the Information Commissioner [EA/2009/0054](#) which is a general endorsement of the Commissioner's general approach of disclosing salary information within £5,000 bands unless the seniority and responsibility of the individuals concerned suggests a more detailed disclosure would be appropriate to satisfy statutory requirements.

- **Personal and private or public life**

68. As stated above, the Commissioner's Awareness Guidance on section 40 of the Act makes it clear that where the information relates to the individual's private life (i.e. their home, family, social life or finances) as opposed to their public life (i.e. their work as a public official or employee) it will deserve more protection than information about them acting in an official or work capacity. In this case the Commissioner is satisfied that the requested information relating to employee salaries of £65,000 and more relates more to their public as opposed to private life.

- **Seniority and roles**

69. As stated above the Commissioner's Awareness Guidance on section 40 of the Act makes it clear that public authorities should take into account the seniority of employees when personal information about their staff is requested under the Act. The more senior a person is, the less likely it is that disclosing information about their public duties will be unwarranted or unfair. Information about a senior official's public life should generally be disclosed unless it would put them at risk or unless it also reveals details of the private lives of other people (e.g. the official's family).

70. In this case the Commissioner accepts that the majority of staff falling within the scope of the complainant's request (i.e. those earning £65,000 and over) occupy senior positions within the council and are obliged to make influential decisions.

- **The rights and freedoms of the data subjects**

71. The Commissioner accepts that the individuals falling within the scope of the complainant's request would have varying expectations as to the level of information regarding their names, job titles and exact salaries which would be disclosed publicly via the council's website and in response to any freedom of information requests. The Commissioner recognises that the more senior the member of staff the less expectation they would have that precise details of their names, job titles and exact salaries would be kept private. Furthermore, an employee's expectation would be influenced by the imminent implementation of the Accounts and Audit Regulations 2003 (as amended).

- **The legitimate interests of the public**

72. The Commissioner recognises that that the council has a duty to be open, transparent and accountable in relation to how it spends public money. This includes ensuring that the details of any remuneration

paid to members of its staff are published in accordance with their reasonable expectations, statutory rules and are accounted for in the council's annual accounts.

73. The complainant believes that full details of council employees' names, job titles and exact salaries where they earn £65,000 and more should be published to demonstrate full transparency and allow adequate public scrutiny.

Conclusion

74. The Commissioner does not accept that the council has adequately addressed the question as to which of the individuals falling within the scope of the complainant's request would have had their names, job titles and exact salaries disclosed in accordance with the provisions of the Accounts and Audit Regulations 2003 (as amended). For example, the council has failed to disclose the Head of Legal and Democratic Services' exact salary despite the fact that he is the Monitoring Officer and therefore probably a 'senior employee' within the meaning of the Accounts and Audit Regulations 2003 (as amended). See above.
75. The Commissioner does however recognise that there will be certain employees earning £65,000 and over who will not be regarded as 'senior employees' as defined by the Accounts and Audit Regulations 2003 (as amended). Accordingly, such employees would have a reasonable expectation that their exact salaries would not be disclosed. However, they would have a reasonable expectation that their salary would be published within £5,000 bands as noted by the Information Tribunal in the case of Brian Gibson and the Information Commissioner EA/2009/0054. The Commissioner therefore concludes that disclosure of the names, job titles and exact salaries of 'senior employees', as defined by the Accounts and Audit Regulations 2003, would not be unfair and would meet schedule 2 condition 6 of the DPA.
76. The Commissioner would like to make clear that he is not attempting to regulate a piece of legislation outside his jurisdiction. He has simply used this legislation as benchmark for determining fairness under the DPA and an indication of legitimate public interest.

The Decision

77. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- It correctly withheld the information relating to the former Chief Executives' redundancy and pension enhancements under section 40(2) of the Act.
 - It correctly withheld the names, job titles and exact salaries of staff not designated as 'senior employees', as defined by the Accounts and Audit Regulations 2003, under section 40(2) of the Act.
78. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
79. Disclosure of the names, job titles and exact salaries of 'senior employees', as defined by the Accounts and Audit Regulations 2003, would not be unfair and would meet schedule 2 condition 6 of the DPA. Section 40(2) is not engaged.

Steps Required

80. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- Disclose the names, job titles and exact salaries of 'senior employees', as defined by the Accounts and Audit Regulations 2003 (as amended),
81. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

82. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

83. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ
Tel: 0300 1234504
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

84. 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.
85. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 23rd day of June 2011

Signed

Steve Wood
Head of Policy Delivery
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Legal Annex

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

Section 2(3) provides that –

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
 - (i) subsection (1), and
 - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
 - (iii) section 41, and
 - (iv) section 44"

Section 40 – Personal information

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if—

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied.

(3) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the [1998 c. 29.] Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the [1998 c. 29.] Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject’s right of access to personal data).

(5) The duty to confirm or deny—

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either—

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the [1998 c. 29.] Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject’s right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the [1998 c. 29.] Data Protection Act 1998 shall be disregarded.

(7) In this section—

- “the data protection principles” means the principles set out in Part I of Schedule 1 to the [1998 c. 29.] Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
- “data subject” has the same meaning as in section 1(1) of that Act;
- “personal data” has the same meaning as in section 1(1) of that Act.

Data Protection Act 1998

Section 1 - Basic interpretative provisions

(1) In this Act, unless the context otherwise requires—

- “data” means information which—
 - (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
 - (b) is recorded with the intention that it should be processed by means of such equipment,
 - (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or
 - (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;
- “data controller” means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;
- “data processor”, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;
- “data subject” means an individual who is the subject of personal data;
- “personal data” means data which relate to a living individual who can be identified—
 - (a) from those data, or
 - (b) from those data and other information which is in the possession of, or is 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;

- “processing”, in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including—
 - (a) organisation, adaptation or alteration of the information or data,
 - (b) retrieval, consultation or use of the information or data,
 - (c) disclosure of the information or data by transmission, dissemination or otherwise making available, or
 - (d) alignment, combination, blocking, erasure or destruction of the information or data;
- “relevant filing system” means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible.

(2) In this Act, unless the context otherwise requires—

- (a) “obtaining” or “recording”, in relation to personal data, includes obtaining or recording the information to be contained in the data, and
- (b) “using” or “disclosing”, in relation to personal data, includes using or disclosing the information contained in the data.

(3) In determining for the purposes of this Act whether any information is recorded with the intention—

- (a) that it should be processed by means of equipment operating automatically in response to instructions given for that purpose, or
- (b) that it should form part of a relevant filing system,

it is immaterial that it is intended to be so processed or to form part of such a system only after being transferred to a country or territory outside the European Economic Area.

(4) Where personal data are processed only for purposes for which they are required by or under any enactment to be processed, the person on whom the obligation to process the data is imposed by or under that enactment is for the purposes of this Act the data controller. (a) from those data, or

(b) from those data and other information which is in the possession of, or is 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."

The first data protection principle provides that –

"Personal data shall be processed fairly and lawfully..."