

Freedom of Information Act 2000 ('FOIA')

Decision notice

Date: 7 August 2013

Public Authority: Dorset County Council

Address: County Hall
Colliton Park
Dorchester
DT1 1XJ

Decision (including any steps ordered)

1. The complainant has requested the details of redundancy packages of seven individuals. The Commissioner's decision is that Dorset County Council ('the council') has correctly applied the exemption for personal data at section 40(2) of the FOIA. He does not require any steps to be taken.

Request and response

2. The complainant originally made this request verbally, as a press enquiry, on 10 January 2013. It was logged on the council's IT system as follows;

"Following the story in The Telegraph, can we provide a comment confirming our position as well as the period of when these were paid and, if possible, which posts are included in the figures."

3. On the same day, the council provided some initial information about the 'pay offs' story including the total amount paid to the seven individuals who received voluntary redundancy, the amount paid into the pension fund to cover the pensions 'strain', and the amount of on-going savings arising from the redundancies.

4. On 11 January 2013, the council informed the complainant that the figures relate to voluntary redundancies during the 2011/2012 accounting year but the individual posts can't be revealed as this is personal information.

5. On 15 February 2013, the complainant made the following written request for information:

"Sorry to revisit an old story but I have been asked to check again if we might be able to get the identity and the details of the seven individuals whose exit packages amounted to more than £1million between them in the 2010-2011 accounts.

I understand the request was initially rejected but we would ask that decision is reviewed and say that the council must disclose the information as it is not barred under any provision of the Freedom of Information Act and in 2011 the Government issued a recommendation that payments to senior figures in public bodies should be made available to the public.

I'm told if the request is refused and a sufficient reason for refusal is not supplied it is something we will be likely to take up with the Information Commissioner. "

6. The council responded on 12 March 2013 and refused to provide the requested information citing the personal data exemption at section 40(2) of the FOIA.

Scope of the case

7. The complainant wrote to the Commissioner on 13 March 2013 to complain about the way his request for information had been handled. He stated that whilst there could be some scope for not releasing the names of individuals involved, he strongly feels that the posts at least should be released.
8. The council appear to have treated the complainant's email of 15 February 2013 as a request for review and responded as such on 12 March 2013. Technically, as a valid request for information under the FOIA needs to be made in writing, and as the email of 15 February 2013 is the first written request for the information, the Commissioner considers that that correspondence should be treated as the original request and the response of 12 March 2013 as the initial response. For pragmatic reasons, the Commissioner has used his discretion to waive the requirement for an internal review to be conducted before making a decision under the FOIA.
9. As the Commissioner noted that the correspondence of 15 February 2013 and 12 March 2013 refer to the 2010/2011 accounts but previous correspondence from the council's public relations officer and press articles refer to the 2011/2012 accounting year, he asked the council for

clarification of whether the information in question relates to the exit packages amounting to more than £1million in the 2010/2011 accounts or the 2011/2012 accounts. The council confirmed that the information relates to the 2011/2012 accounts.

10. The Commissioner has considered the council's application of section 40(2) to the requested information.

Reasons for decision

Section 40 - personal information

11. 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 or section 10 of the Data Protection Act 1998 ('the DPA').

Is the withheld information personal data?

12. Personal data is defined by the DPA as any information relating to a living and identifiable individual. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way. The withheld information comprises of the job titles and amount of redundancy payments made to seven individuals. The Commissioner is satisfied that an individual's job title and financial settlement on leaving employment is personal data as defined in the DPA.

Would disclosure breach the Data Protection Principles?

13. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subject, the potential consequences of disclosure and balanced the rights and freedoms of the data subject with the legitimate public interest in disclosing the information.

Nature of the information and reasonable expectations

14. Whether or not the disclosure of information was within the reasonable expectations of an individual is not merely about consent although seeking the views of the individual concerned will often be a reliable

indicator of what was expected. In its response, the council stated that a letter was sent to each employee and, in each case, the data subjects did not consent to disclosure. The council also sent the Commissioner a copy of correspondence from the data subjects in which consent is explicitly refused. It is therefore clear in this case that the data subjects clearly expressed that they did not expect the information to be publicly available. The next step is to consider whether or not this was a reasonable expectation to have had in the circumstances.

15. The council has stated that there is a genuine expectation that details of the redundancy packages would not be released into the public domain. It said that it is impossible to determine what the data subjects were verbally promised at the time redundancy was taken, as there is nothing in writing, but there must be a general expectation that their identities and specific individual payments should not be released. It added that this is particularly so as the payments were made in accordance with the council's redundancy policy and calculator at the time of their departure.
16. The Commissioner recognises that people have an instinctive expectation that a public authority, in its role as a responsible employer and data controller, will not disclose certain information. He considers that information relating to the termination of an individuals' employment will attract a strong general expectation of privacy as it is inherently personal to the data subject.
17. This expectation of privacy was affirmed in the relatively recent Tribunal case of *Trago Mills (South Devon) Limited v Information Commissioner and Teignbridge District Council*¹. The Tribunal upheld the Commissioner's decision that disclosure of the details of a severance agreement would be unfair and thus contravene the first data protection principle. The Tribunal 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 should lead us to conclude that, on balance, disclosure would not have represented an unwarranted interference with that right."

¹ Appeal number EA/2012/0028

18. The Commissioner made enquiries as to the seniority of the data subjects in this case. The council has said that only one of the seven employees was defined as a Chief Officer under the Localism Act.
19. The Commissioner considers that public sector employees should expect some information about their roles and the decisions they take to be disclosed under the FOIA. He believes that a distinction can be drawn about the levels of information which junior staff should expect to have disclosed about them compared to what information senior staff should expect to have disclosed about them. This is because the greater the seniority of a member of staff, the greater the likelihood that they will have responsibility for influencing or making policy decisions and/or decisions which involve the expenditure of public funds.
20. However, redundancy does not relate to employees' official functions and responsibilities but instead signals the end of the relationship between the employer and organisations, which as mentioned above, carries a strong general expectation of privacy.
21. The Commissioner's guidance on requests for personal data about public sector employees² 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 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."

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http://www.ico.org.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Practical_application/section_40_requests_for_personal_data_about_employees.ashx

22. In this case, one of the seven data subjects received a redundancy payment of between £50,000 and £150,000. The Commissioner notes that the councils accounts for year 2011/2012, under the heading 'Exit packages & termination benefits', states;

"The revised Code requires the Authority to disclose details of the number and value of exit packages agreed in the bandings shown below in the table and to distinguish these by compulsory redundancies and other departures."³

He therefore considers that the Chief Officer in this case would not have had a reasonable expectation that the exact details of the redundancy payment would be disclosed in a manner in which is linked to the specific role.

23. Taking the above into consideration, including the fact that the above mentioned guidance pre-dates the request in this case, the Commissioner considers that the data subjects would have had a reasonable expectation that the specific details of their redundancy packages would not enter the public domain.

Consequences of disclosure

24. One of the data subjects raised concerned that disclosure would put them in the media spotlight and cause them, at best, embarrassment with their neighbours or, at worst, to be a victim of a vindictive witch-hunt.
25. The council considered whether the unfairness being claimed would diminish over time. It said that although the payments relate to the 2011/12 financial year, this would not lessen the potential for distress.
26. In this case, the Commissioner considers that disclosure would amount to an infringement into the privacy of the data subjects which has the potential to cause damage and distress.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

27. In considering 'legitimate interests in disclosure', such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.

³ <http://www.dorsetforyou.com/media.jsp?mediaid=176516&filetype=pdf>

28. The Commissioner recognises that there is a legitimate public interest in the expenditure of public money, especially in a climate of considerable public sector cuts and associated redundancies. He considers that this interest extends to ensuring a public authority is effectively overseeing the departure terms of its employees and is an important factor in the case of redundancy where a motivating factor is likely to be efficiency savings.
29. The council pointed out that it has already provided the number of individuals involved and the total payments received. It stated that it could not see the benefit to the public in knowing the identities of the individuals involved, especially when all the payments were made in accordance with the council's redundancy policy and calculator at that time, and when none of the cases involved any misconduct or wrongdoing. It stated that the information is not 'necessary' and there is no 'pressing social need'.
30. As both the Commissioner and the Tribunal have made clear in the Trago Mills case previously cited, the legitimate interests of the public in knowing the financial details of redundancy must be weighed against the individual's right to privacy. The Tribunal made clear that such decisions should be made on the expectations of privacy held by 'the reasonably balanced and resilient individual'. The Tribunal concluded that:

"We do not find that the Council's duty to be transparent and accountable about the expenditure of public money outweighs the requirement to respect the former employee's reasonable expectation of privacy. Accordingly, we conclude that disclosure would have breached the data protection principles."
31. In this case, the Commissioner considers that the legitimate interest in the expenditure of public money has been somewhat met by the disclosure of the high level redundancy information previously provided to the complainant and contained in the council's accounts.

Conclusion on the analysis of fairness

32. Taking all of the above into account, the Commissioner concludes that it would be unfair to the data subjects concerned to release the requested information. Disclosure would not have been within their reasonable expectations and the loss of privacy could cause unwarranted distress. He acknowledges that there is a legitimate interest in the expenditure of public money but does not consider that this outweighs the data subjects strong expectations of, and rights to, privacy.
33. As the Commissioner has decided that the disclosure of this information would be unfair, and therefore in breach of the first principle of the DPA,

he has not gone on to consider whether there is a Schedule 2 condition for processing the information in question. The Commissioner has therefore decided that the council was entitled to withhold the information under the exemption at section 40(2).

34. The Commissioner has also considered whether it is possible to provide the requested information in a manner that would be fair to the data subjects. The complainant has suggested that the job titles at least should be disclosed. The council said it had considered the possible release of job titles rather than individuals' names but as the positions held were unique, it would be a simple task for the complainant to look at previous statements and interviews given by these individuals to the newspaper he works for and match names to job titles. The Commissioner considers that it is reasonable and realistic to assume that there would be colleagues or acquaintances of the individuals who would be able to identify them by the job titles and therefore release of the job titles would also be unfair in this case.

Right of appeal

35. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

36. 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.
37. 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

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