

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 August 2014

Public Authority: Herefordshire Council
Address: Brockington
35 Hafod Road
Hereford
HR1 1SH

Decision (including any steps ordered)

1. The complainant has requested information about severance payments made by the Council in particular circumstances. The Council has provided the complainant with some information but has refused to provide some of the requested information under section 40(2) and section 41 of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner's decision is that Herefordshire Council was correct to apply section 40(2) FOIA to the withheld information.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 8 November 2013 the complainant requested information of the following description:

"Please browse to Wirral Leaks, an increasingly popular Wirral-based blog, and to the post-dated 5th October 2013, entitled:

"Bullying Is An Ugg-ly Business"

<http://wirralleaks.wordpress.com/2013/10...>

This blog has been the source of entirely accurate information in the past and worryingly, this particular thread reports that an unnamed officer of Wirral Council has recently been compensated in

the sum of £48,000 (tax free) -following what appears to have been an internal dispute / complaint.

I would like you to provide details of ALL Herefordshire Council officers who have been in receipt of similar payments, whether they be hidden, or declared and scrutinised by members, in these or similar circumstances.

Please provide:

1. Date of payment
2. Amount of payment
3. Reason for payment
4. Have the payment / circumstances been declared publicly?
5. Subject matter e.g. Racial Discrimination; Bullying & Harassment; Dignity at Work Complaint, etc.
6. Copies of reports; aide memoirs; emails; letters; memoranda; notes; meeting minutes; meeting notes (verbatim or non-verbatim), whether in written or electronic format, and connected to meetings, council scrutiny committees, investigations (internal or external), and / or the processing of any payments.
7. Outcome - e.g. whether employees involved are still employed by the council.
8. Disciplinary Action involved, if any.
9. Number of employees involved in dispute / complaint
10. Number of employees in receipt of payment(s)

I am not asking for names or job positions / sections / departments as I'm aware these details could be used to identify employees and thereby infringe upon their personal privacy. Please redact such identifying information in line with the Data Protection Act.

However, please do not overstep the mark by redacting e.g. the quantities in public money that may have been paid out to officers. Such details are vital to the legitimate and compelling public interest."

5. On 21 November 2013 the complainant clarified a time frame for his request, he said he was interested in information from 8 April 2010 to 8 November 2013.
6. On 9 December 2013 the Council responded. It provided the complainant with some of the requested information but withheld some information under section 40(2) and section 41 FOIA.
7. The complainant requested an internal review. The Council sent the outcome of its internal review on 12 February 2014. It provided the

complainant with some further information but upheld the application of section 40(2) and section 41 FOIA to the remaining withheld information.

Scope of the case

8. The complainant contacted the Commissioner on 14 February 2014 to complain about the way his request for information had been handled.
9. The Commissioner has considered whether Herefordshire Council is correct when it says it is entitled to rely on section 40(2) or section 41 FOIA in this case.

Reasons for decision

10. Under section 40(2) by virtue of section 40(3)(a)(i), personal data of a third party can be withheld if it would breach any of the data protection principles to disclose it.
11. Personal data is defined in section 1(1) of the Data Protection Act (DPA) as:

“data which relate to a living individual who can be identified –

 - (i) from those data, or
 - (ii) 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.”
11. The two main elements of personal data are that the information must ‘relate’ to a living person and that the person must be identifiable. 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.
12. Herefordshire Council explained that it has confirmed to the complainant that 5 payments had been made, it has confirmed that between 10 and 20 individuals were involved in the grievance, it has confirmed the reasons for the payments were ‘grievance settlements’ and it has also confirmed that the payments have not been declared publicly. It said that any further information held relevant to the scope

of the request, including the amounts of the payments made would be information from which the data subjects involved in the grievance would be identifiable. After viewing the withheld information and taking into account the Council's further submissions contained within the confidential annex to this Notice, the Commissioner considers the remaining withheld information is information from which the data subjects would be identifiable.

13. Personal data is exempt if either of the conditions set out in sections 40(3) and 40(4) of FOIA are met. The relevant condition in this case is at section 40(3)(a)(i) of FOIA, where disclosure would breach any of the data protection principles. In this case the Commissioner has considered whether disclosure of the personal data would breach the first data protection principle, which states that "Personal data shall be processed fairly and lawfully". Furthermore at least one of the conditions in Schedule 2 should be met. In addition for sensitive personal data at least one of the conditions in Schedule 3 should be met.

Likely expectation of the data subject

17. The Council explained that although the information relates to council employees it is information that reveals how a private dispute was settled and the amount of money received as a result of settling that dispute. It said the information is more revealing about the data subject's private life than their public life because it concerns their grievance over how they have been treated.
18. The Council therefore argued that the reasonable expectation of the members of staff involved would be that their identities would not be revealed and that information about the settlement would not be disclosed.
19. Furthermore it said that the settlements contain clauses relating to the need to keep the contents confidential which are binding for all parties which would also indicate the data subjects reasonable expectations.

Damage and distress

20. The Council argued that disclosure would cause damage and distress to the data subjects professionally and personally in that if it were known that they were involved in a grievance it would or would be likely to affect their future employment prospects as well opening up a situation that has now been settled with new working practices in place.

The legitimate public interest

21. The Council acknowledged that there is a legitimate public interest in knowing how public money has been spent and how decisions are arrived at.
22. The Commissioner considers that whilst there is a legitimate public interest in the disclosure of the withheld information, for the reasons provided within the confidential annex and set out above the Commissioner does not consider that the legitimate public interest would outweigh the interests of the data subjects in this case.
23. The Commissioner therefore considers section 40(2) FOIA was correctly applied to the withheld information in this case.
24. As the Commissioner considers that section 40(2) FOIA was correctly engaged in this case, he has not gone on to consider the application of section 41 FOIA any further.

Right of appeal

25. 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:

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

26. 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.
27. 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

Pamela Clements
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Wycliffe House
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SK9 5AF