

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 November 2014

Public Authority: Wirral Metropolitan Borough Council

Address: Wallasey Town Hall
Brighton Street
Wallasey
Wirral
CH44 8ED

Decision (including any steps ordered)

1. The complainant has requested information from Wirral Metropolitan Borough Council ("the council") about any council officers who have received compensation from the council for internal disputes or complaints. The council refused the request under the exemption provided by section 40(2) of the Freedom of Information Act ("the FOIA").
2. The Commissioner's decision is that the council has correctly applied section 40(2).
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 6 October 2013 the complainant wrote to the council and requested the following:

"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 the 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 read the article and provide details of ALL council officers who have been in receipt of these kind of payments, whether hidden or declared, 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)."*
5. The council responded on 24 October 2013. It stated that it held information but that it was exempt under section 40(2).
 6. Following an internal review the council wrote to the complainant on 29 November 2013. It upheld its position.

Scope of the case

7. The complainant contacted the Commissioner 29 November 2013 to contest the council's response.
8. The Commissioner considers that the scope of this case is the determination of whether the council has correctly applied the exemption provided by section 40(2).

Reasons for decision

Section 40(2) – Third party personal data

9. Section 40(2) provides that:

"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."*

10. Section 40(3) provides that:

"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 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..."*

Is the withheld information personal data?

11. Personal data is defined by section 1 of the Data Protection Act 1998 ("the DPA") 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 data controller or any person in respect of the individual..."*

12. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA. In this instance the Commissioner has reviewed the withheld information and has identified that it specifically relates to individual/s who have been awarded compensation in respect of internal disputes or complaints.

13. The Commissioner has considered the extent to which the withheld information could be anonymised by removing the personal data, but

has concluded that it would not be possible to redact the information in a meaningful manner without rendering it useless.

14. The Commissioner is also aware that the complainant may hold knowledge of an individual who has received such a payment. While such information may have been 'leaked' outside the council in the past, there is no evidence before the Commissioner that the council has purposely disclosed such information in a manner that has affected its necessary quality of confidence.

Is any of the information sensitive personal data?

15. Section 2 of the DPA defines sensitive personal data as personal data that consists of information about the following:

- an individual's mental or physical health,
- their political opinions,
- their sex life,
- their racial or ethnic origin,
- their religious beliefs,
- whether they are a member of a trade union,
- the commission of alleged commission of an offence by them, or any proceedings for any offence they have committed or are alleged to have committed.

16. The Commissioner considers that a small proportion of the withheld information falls under one of the above categories, and therefore represents the sensitive personal data.

Would disclosure breach the data protection principles?

17. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
18. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations of the data subject

19. When considering whether a disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
20. In this case the council has consulted with the relevant individual/s, and has not received consent to the disclosure of the withheld information. The council has also confirmed that it does not consider disclosure to be reasonable, as the withheld information relates to claims made by the individual/s against the council as an employer.

The consequences of disclosure

21. The council considers that the disclosure of the withheld information would have an unjustified adverse effect on the individual/s, whose rights and freedoms as a data subject would be interfered with should the information, which relates specifically to any claim/s against the council as an employer, be disclosed.
22. The council further considers that the disclosure of the information would undermine the trust and confidence that needs to exist between employer and employee, and would potentially inhibit the council from being able to effectively negotiate settlement of disputes with its employees in the future.
23. On the other hand, it is clear from the complainant's request that he considers that the disclosure of the requested information would provide public assurance that the management of any such claim/s had been subject to proper scrutiny.

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

24. The council has explained that it considers that the disclosure of the information would significantly affect the rights and freedoms of the relevant individual/s, and that it does not consider there to be a legitimate interest in disclosure. The council has advised that the information relates to the individual/s as employees of the council, rather than their public duties, and as such constitutes information held for the purpose of managing human resources. The council has specifically referred the Commissioner to the decision reached in *Gibson v Information Commissioner and Craven District Council* (EA/2010/0095) in which the First Tier Tribunal accepted that information about individual employees would be held for the purposes

of human resources management, and would attract a strong expectation of privacy and protection.

25. In contrast with this, the Commissioner has noted the complainant's position that any awarded compensation represents public monies, and that the council should apply greater transparency on this basis.
26. In decision notice FS50438500 the Commissioner considered the distinction between information about the public role of an individual, and information about the individual's employment that was likely to be held within personnel files. As explained in that decision, the Commissioner and the First-tier Tribunal have previously placed a strong weight on the disclosure of personal information where this relates to the accountability of actions by senior public or civil servants in their official capacity. However, in the circumstances of this case, the requested information relates to compensation awarded to employee/s in relation to an internal dispute or complaint. As such, the information relates to the councils management of its human resources.

Conclusion

27. There is always some legitimate public interest in the disclosure of any information held by public authorities. This is because disclosure of information helps to promote transparency and accountability amongst public authorities. This in turn may assist members of the public in understanding decisions taken by public authorities and perhaps even to participate more in decision-making processes.
28. Having considered the circumstances of this case, the Commissioner has concluded that releasing the withheld information would not be within the expectations of the individual/s to who it pertains. This is because the information relates to an internal dispute or complaint for which an employee/s received compensation, and as such would be held within personnel files with a strong expectation of privacy. Further to this, the Commissioner perceives that a proportion of the withheld information meets the definition of 'sensitive personal data', and that a further proportion would be highly likely to engage the exemption provided for legal professional privilege by section 42(1). As such, the Commissioner considers that this would increase the expectation of privacy that the individual/s would hold in respect of their personal data.
29. The Commissioner has therefore concluded that disclosing the withheld information would not be fair under the first principle of the DPA, and that the exemption provided by section 40(2) is engaged.

Right of appeal

30. 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

31. 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.
32. 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
Group Manager
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Wycliffe House
Water Lane
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SK9 5AF