

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 19 January 2015

**Public Authority:** Pembrokeshire County Council  
**Address:** County Hall  
Haverford West  
Pembrokeshire  
SA61 1TP

#### Decision (including any steps ordered)

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1. The complainant requested information relating to the car leasing arrangements for the Chief Executive of Pembrokeshire County Council ('the Council'). The Council disclosed some of the information, but withheld the remainder under the personal data exemption at section 40(2) of the FOIA. The Commissioner's decision is that the Council incorrectly applied this exemption.
2. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation.
  - disclose the monthly cost of current and past car lease arrangements for the Chief Executive.
3. The public authority must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

#### Request and response

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4. On 11 March 2014, the complainant wrote to the Council and requested information in the following terms:
  - *"The details of current and past lease car arrangements for Chief Executive, Bryn Parry Jones including make and model of the*

*vehicles, along with details of the company providing lease car arrangements.*

- *The monthly cost of current and past lease car arrangements for Mr Bryn Parry Jones”*
5. The Council responded on 8 April 2014. It refused to provide information relating to the lease car arrangements of the Chief Executive, citing section 40(2) of the FOIA. It stated that remuneration details of the Chief Executive could be found in the Council’s published statement of accounts, and provided a link to this document.
  6. Following an internal review the Council wrote to the complainant on 12 May 2014. It stated that it continued to apply section 40(2) to the requested information.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 12 May 2014 to complain about the way his request for information had been handled.
8. In its initial response to the request, the Council stated that the monthly cost of leasing arrangements was contained within its statement of accounts, and provided a link to the relevant document.
9. It became apparent during the Commissioner’s investigation that the statement of accounts did not contain the specific information requested ie the monthly cost of car leasing arrangements, but rather contained details of the Chief Executive’s overall remuneration package. The Commissioner therefore asked the Council whether it held the information requested, and if so, whether it would be prepared to disclose it, or confirmation of any exemptions considered applicable. The Council confirmed that it held the information in question but it considered it to be exempt under section 40(2).
10. During the course of the Commissioner’s investigation, the Council disclosed the make, model and suppliers of current and past lease cars used by the Chief Executive. The investigation therefore only considered the remaining withheld information which comprises of the monthly cost of current and past car leasing arrangements.

## Reasons for decision

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### Section 40 – the exemption for personal data

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').
12. The Council considers that the information requested constitutes the personal data of the individual concerned and that disclosure would breach the first data protection principle.

### Is the requested information personal data?

13. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by section 1 of the DPA. It defines personal information as data which relates to a living individual who can be identified:
  - from that data,
  - or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
14. The two main elements of personal data are that the information must "relate to" a living person, and that 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 them in any way.
15. The Council confirmed that the car leasing arrangements form part of the Chief Executive's remuneration package. It also contends that the car is not supplied exclusively for work purposes and therefore also relates to the Chief Executive's private life.
16. In light of the fact that the leasing arrangements form part of his remuneration package and the car is supplied for personal use as well as work purposes, the Commissioner accepts that the withheld information constitutes the personal data of the Chief Executive as it clearly relates to him and his personal life.

### Would disclosure contravene the first data protection principle?

17. Having accepted that the information requested constitutes the personal data of a living individual other than the applicant, the Commissioner must next consider whether disclosure would breach one of the data protection principles. He considers the first data protection principle to

be most relevant in this case. The first data protection principle has two components:

- personal data shall be processed fairly and lawfully; and
- personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

### **Would disclosure be fair?**

18. In considering whether disclosure of the information requested would comply with the first data protection principle, the Commissioner has first considered whether disclosure would be fair. In assessing fairness, the Commissioner has considered the reasonable expectations of the individual concerned, the nature of those expectations and the consequences of disclosure to the individual. He has then balanced against these the general principles of accountability and transparency, as well as any legitimate interests which arise from the specific circumstances of the case.
19. The Council's view is that disclosure of the withheld information would disclose how the Chief Executive had chosen to spend his salary or benefits in kind, and would therefore be a breach of the first data protection principle. It states that "whilst the total amount paid out to senior staff is discloseable, the manner in which the individual chooses to then spend this money is a private matter".
20. When supplying the withheld information to the Commissioner, the Council qualified this with a statement explaining that in 2014 the Chief Executive had utilised a 'credit' on his lease car account whereby he used credit built up from previous car lease arrangements as funds for the current leased car. In other words, the Chief Executive had underspent on his leased car arrangements in previous years and was now putting the underspent amount towards his lease car for 2014. The Council's view is that this is further evidence of how the Chief Executive was choosing to spend his remuneration and therefore supported its view that disclosure would be unfair.
21. The Commissioner considers the seniority of the individual concerned to be an important factor when taking into account their reasonable expectations. In his view, the more senior a person is, the less likely it is to be unfair to disclose information relating to their official capacity.
22. In this particular case, the Commissioner notes that the individual in question is the most senior paid employee of a large public authority. The Commissioner's opinion is that an individual occupying such a prominent position could reasonably expect a degree of public scrutiny

into those aspects of their personal life that cross over into their public serving role.

23. The Commissioner notes that, whilst being the personal data of the Chief Executive, the information requested is also financial information relating to the expenditure of a large public authority. In addition, he is mindful of the benefits to wider society of openness and transparency when public monies are being spent, especially in relation to payments made to senior staff.
24. The Commissioner accepts that to a limited degree, disclosure of the monthly cost of the car leasing arrangements could constitute a minor infringement of the privacy of the Chief Executive given that it would disclose the amounts he decided to spend on his vehicles over the years. However, he is not convinced that the information is specific enough to make any meaningful statement about the personal life of the Chief Executive, nor is he convinced that disclosure of the information into the public domain would have any tangible consequences for him. The information does not, for example, specify the amounts that the Chief Executive carried across into 2014 as part of the credit agreement. Were it to do so, then disclosure would be likely to have a greater impact on his privacy.
25. The Commissioner notes that a number of press articles relating to the remuneration of the Chief Executive had been published prior to the request for information being submitted<sup>1</sup>. He considers this to be evidence of a degree of public interest in the subject matter.
26. The Commissioner considers that disclosure of the information would contribute to the public's understanding of the composition of remuneration packages offered by the Council to its senior employees, and in doing so help satisfy the public interest.
27. The Commissioner has weighed up the factors for and against the fairness of disclosing the withheld information. His opinion is that the seniority of the individual concerned, the limited consequences of disclosure and the public interest in the subject matter outweigh the individual's reasonable expectations and that disclosure would therefore be fair.

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<sup>1</sup> <http://www.bbc.co.uk/news/uk-wales-south-west-wales-26438339>  
<http://www.bbc.co.uk/news/uk-wales-25948610>  
<http://www.bbc.co.uk/news/uk-wales-south-west-wales-24291845>

## **Is there a lawful basis for disclosure?**

28. Having determined that it would be fair to disclose the Chief Executive's personal data, the Commissioner has gone on to consider whether a condition in Schedule 2 of the DPA would be met. In relation to the conditions in Schedule 2, the Commissioner believes that the most relevant condition is the sixth. This states that:

"The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms of legitimate interests of the data subject".

29. In order for the condition to be met, the Commissioner considers that disclosure must satisfy a three part test:

(i) there must be a legitimate interest in disclosing the information

(ii) the disclosure must be necessary for that legitimate interest

(iii) even where the disclosure is necessary it must not cause unwarranted interference or harm to the rights, freedoms and legitimate interests of the data subject.

30. The Commissioner has explained above why he believes there is a legitimate interest in disclosure of the Chief Executive's personal data. In the particular circumstances of this case, i.e. given the media interest about the Chief Executive referred to in this notice, the Commissioner believes that it is necessary to disclose this information despite the other information which has already been placed into the public domain. The Commissioner believes that any public interest in disclosure must be weighed against the potential prejudices to the rights, freedoms and legitimate interests of the staff whose personal data is contained within the withheld information. Taking into account all of the points discussed above, the Commissioner has concluded that the strength of the legitimate interest in disclosure is sufficient to outweigh the privacy rights of the Chief Executive in this instance.

31. Having decided that disclosure of the withheld information would be fair and would meet a schedule 2 condition, the Commissioner has gone on to consider whether disclosure would be lawful. As far as the Commissioner is aware, the information is not protected by any duty of confidence or statutory bar and he therefore considers that its disclosure would be lawful.

## **Other matters**

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32. The Commissioner notes that the Council initially stated that information about the cost of car leasing arrangements was publicly available in its statement of accounts. However, during the course of his investigation, the Council accepted the information was not contained within the document and sought to rely on section 40(2) in respect of it. It would therefore appear that in its initial handling of the request, the Council did not properly identify what relevant information was held. The Council should ensure in future that its first step upon receiving an information request is to identify all relevant information it holds. Only then should it consider to what extent this information may be covered by exemptions or exceptions. A failure to obtain or consider the actual information requested could, as in this case, result in an incorrect or inaccurate response being issued. The Commissioner considers that this is extremely poor practice.

## Right of appeal

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33. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

34. 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.
35. 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** .....

**Anne Jones**  
**Assistant Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**