

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 March 2015

Public Authority: Isle of Anglesey County Council

Address: Council Offices

Llangefni

Anglesey

LL77 7TW

Decision (including any steps ordered)

1. The complainant requested the name of the officer who declared an interest in a particular planning application. Isle of Anglesey County Council ('the Council') withheld the information under section 40(2) of the FOIA. The Commissioner's decision is that the Council correctly applied section 40(2) to the information it holds relevant to the request. The Commissioner does not require any steps to be taken.

Request and response

2. On 4 August 2014, the complainant wrote to the Council about a particular planning application, and raised a number of queries about the application. In this letter (at point 2) he requested information in the following terms:

"In the minutes of the Planning Committee it stated that this application had been referred to the Committee as the Applicant was a friend of a relevant Officer – who is the relevant officer? If this application was referred due to this why was the planning application number [number redacted] not referred to committee and who signed this application off".

3. The Council initially addressed the request for information in a response dated 12 August 2014. The Council stated that:

"Any Declaration of Interest made on planning applications by relevant officers is kept confidentially and are not made available to members of

the public. In response to why such a declaration was not submitted on application [number redacted] I am unable to comment any further as to whether or not to declare an interest in relation to any application is a matter for the officer."

4. The complainant wrote back to the Council on 18 August 2014 stating that he wanted to register a formal complaint against the planning application. He also stated that he did not feel he had received a full response to point 2 of his letter of 4 August 2014. He said that it was still not known whether the officer had had any input in to the application and under the FOIA he thought he should be told this. The Council acknowledged this letter on 21 August 2014. It confirmed that the freedom of information request relating to the response to question 2 of the letter of 4 August 2014 would be dealt with separately.
5. The Council wrote to the complainant on 12 September 2014 and stated that it had "nothing further to add in response to any of the responses other than to confirm to you that the 'Relevant Officer' was not involved in any way in the course of processing or determining planning application reference [number redacted]".
6. Following a letter from the Commissioner dated 12 November 2014, the Council provided the outcome of its internal review on 24 December 2014. The internal review referred to the request for information dated 18 August 2014 about an officer's involvement in the planning application in question. The Council stated that it considered its response of 12 September 2014 adequately explained the officer's involvement in the planning process. It also stated that no information had been withheld relevant to the request.

Scope of the case

7. The complainant initially contacted the Commissioner on 30 October 2014 and expressed his dissatisfaction that the Council had not provided details of the identity of the relevant officer, as referred to in the minutes of the Planning Committee meeting in question.
8. Following receipt of the Council's internal review response, the complainant contacted the Commissioner again on 14 January 2015. He re-iterated that he was dissatisfied that the Council had still not provided the name of the relevant officer who declared an interest in the outline planning application in question.
9. During the course of the Commissioner's investigation, it became clear that the internal review undertaken by the Council had addressed the issue of the involvement of the officer concerned rather than the

name/identity of the officer. The Commissioner pointed this out to the Council and asked it to review the request of 4 August 2014 for the identity of the officer concerned. The Council subsequently confirmed that it considered the name of the officer to be exempt under section 40(2) of the FOIA and wrote to the complainant to confirm its position.

10. In light of the above, the scope of the Commissioner's investigation into this complaint is to determine whether the Council should disclose the information held relevant to the request or whether it was correct in relying on section 40(2) of the FOIA.

Reasons for decision

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. In considering whether the information requested is "personal data", the Commissioner has taken into account his own guidance on the issue¹. The two main elements of personal data are that the information must

1

http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Data_Protection/Detailed_specialist_guides/PERSONAL_DATA_FLOWCHART_V1_WITH_PREFACE001.ashx

“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 withheld information in this case comprises the name of a Council officer who declared that the applicant for a particular planning application was a friend. As a result the planning application was presented to the Council’s Planning and Orders Committee for consideration. The Commissioner considers that the individual can be identified from their name and the fact that they work for the Council. In the context of the request, the name clearly comprises data which relates to the individual concerned as it refers to their friendship with a planning applicant. The Commissioner therefore accepts that the information in the context of this request is personal data as defined by the DPA.

Would disclosure breach one of the data protection principles?

16. 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?

17. 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, transparency as well as any legitimate interests which arise from the specific circumstances of the case.
18. In this case, the planning application in question was referred to the Council’s Planning and Orders Committee for determination because the applicant was a friend of a “relevant” officer as defined within paragraph

the Council's Constitution. Paragraph 4.6.10.2 of the Constitution states that:

"4.6.10 Development Proposals Submitted by Councillors and Officers

4.6.10.1 Proposals by serving councillors (whether or not they are councillors on the Committee), certain categories of officers and their close friends and relatives can easily give rise to suspicions of impropriety. It is vital that they are handled in a way which gives no grounds for accusations of favouritism. In these rules "relatives" encompass spouse or partner, parent, grandparent, child, grandchild, brother or sister.

4.6.10.2 Planning applications falling within the following categories will be reported to the Committee for consideration and not dealt with by officers under 'delegated powers':

- those where the applicant is a serving councillor or the relative of a serving councillor,
- those where a serving councillor acts as agent or has prepared any part of the application or plans,
- those where the applicant is a relevant officer or their relative. In this rule "relevant officer" means the Chief Executive, Deputy Chief Executive, all Directors, all Heads of Service, all officers working in the Planning Department and all other officers whose work is directly linked to the development control process (such as officers in Highways and Environmental Health who are consultees or lawyers who advise and represent the Planning Department in development control matters),
- those where the applicant is a close friend of a serving councillor or relevant officer.

In this rule "planning application" shall mean all applications required by statute to be made and which (apart from this rule) would fall to be determined under the Council's Constitution by the Head of Planning Service. These would include applications for outline consent, reserved matters approval, listed building consent, conservation area consent, consent under Tree Preservation Orders and so forth.

4.6.10.3 Planning officers shall endeavour to identify and highlight such applications and shall accordingly inform the Head of the Planning Service and the Authority's Monitoring Officer. Serving councillors who make applications, who act as agents or who prepare plans or whose

relatives make applications, should play no part in the decision-making process for that proposal”.

19. The Council explained that it is established practice that matters relating to officers declaring an interest in issues such as this are kept confidential. Although the Council does not have a specific policy in relation to disclosure of officers' declarations of interest, it follows the principle that such declarations are kept confidential. This advice has been reiterated verbally to the planning service by the Council's legal department. The Council contends that “the practice of confidentiality protects and maintains the system” and officers have a reasonable expectation of confidentiality when they declare an interest in matters such as planning applications.
20. The Council confirmed that the individual in this case is not a head of service, and therefore not considered a senior officer. The officer has a public facing role, which includes contact with members of the public but they do not represent the planning service or the Council to the public at large. The officer is responsible for making decisions on specific planning matters but is not responsible for major policy decisions or for expenditure of public funds.
21. In terms of the consequences of disclosure, the Council pointed out that planning matters are frequently contentious issues and give rise to strong feelings. The Council considers that this is particularly the case in a small rural community such as Anglesey. In matters such as planning, the Council considers that it would not be beyond the realms of possibility for unfair allegations about officer behaviour or even corrupt or biased decision making allegations to be made about an individual officer. Although the Council accepted that it has no grounds to support any assertion that the complainant in this case would make any such allegations, it has a duty to be alert to any prejudice which may be caused through disclosure of the withheld information.
22. The Council referred to the fact that it had already confirmed to the complainant that the officer involved played no part in the planning process in this case. The Council also pointed out that the Public Services Ombudsman for Wales ('PSOW') had written to the complainant about related issues on at least two occasions. The PSOW wrote to the complainant on 18 December 2014 and confirmed that he had not identified any evidence of maladministration or service failure in the way in which the Council determined the particular planning application.
23. The Council contends that it is difficult to argue that the complainant, or any other person, has a legitimate interest in disclosure of the information “without prejudice to the privacy rights of the data subject”. The Council also considers that disclosure of the withheld information

would breach the rights and expectations of the planning applicant in this case as disclosure of the officer's name would also disclose personal information about the planning applicant inasmuch as it would reveal their relationship/friendship with the particular officer.

24. In general, the Commissioner considers that while senior officers would be likely to have a greater expectation that their personal data would be disclosed, more junior officials would have a greater expectation of privacy, with their names not being disclosed to the public at large. In this case, the Commissioner notes that the withheld information relates to a junior member of staff. The Commissioner accepts, therefore that the individual concerned would have had no expectation that their details would be disclosed into the public domain.
25. The Commissioner appreciates that planning issues can be controversial matters that can give rise to strong feelings. The Commissioner notes that various objections and complaints have been made about this particular planning application. He therefore accepts that disclosure has the potential to lead to the officer concerned being targeted about the subject matter and could expose them to unfair allegations.
26. 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. In this case, the Commissioner accepts that there is a legitimate interest in the public being satisfied that the Council and its officers are following appropriate processes in place in determining planning applications.
27. However, the Commissioner notes that the Council has confirmed to the complainant that the officer in question had no role or involvement in the planning application concerned. In addition, it appears that the officer declared an interest in line with the Council's constitution and the application was subsequently referred to the Planning and Order Committee in line with the provisions Constitution. This fact is recorded within publicly available minutes and the Commissioner considers that, to a large extent, any legitimate interests of the public have been satisfied through disclosure of that information. Taking account of all the circumstances of this case, the Commissioner is satisfied that disclosure of the withheld information would be unfair and unnecessary in the circumstances and any legitimate interest of the public does not outweigh the individual's expectations on how their personal data would be processed and any consequences of disclosure. Therefore the Commissioner is satisfied that the Council has correctly relied on section 40(2) of the FOIA to withhold/redact the information it has in this case.

Right of appeal

28. 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

29. 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.
30. 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