

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 28 April 2016

**Public Authority:** North Norfolk District Council  
**Address:** Holt Road  
Cromer  
Norfolk  
NR27 9EN

#### Decision (including any steps ordered)

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1. The complainant has requested a copy of an investigation report with regards to a code of conduct complaint. North Norfolk District Council (the council) refused the requested information under section 40(2) of the FOIA as it considered the information to be third party personal data.
2. The Commissioner's decision is that the council has correctly relied on section 40(2) of the FOIA to refuse the request in this case.
3. The Commissioner does not require the council to take any steps.

#### Request and response

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4. On 29 July 2015, the complainant requested the following information from the council:

*"I am a parishioner of Hickling. I was one of more than 200 parishioners present at the EGM of our Village Hall Charity held on 26 September 2014. At this meeting we were being advised to approve a new constitution for the Village Hall Charity. [Name redacted] addressed the meeting in her capacity as chair of Hickling Parish Council, urging us to vote for the new constitution.*

*I understand that, as a result of claims [name redacted] made in*

*her address, a Code of Conduct complaint was made against her, and that this complaint was investigated.*

*I request a copy of the report that resulted from that investigation and of the decision that was reached following receipt by NNDC of the report."*

5. The council responded on the 1 September 2015 refusing the request under section 40(2) of the FOIA as it considered it to be a request for third party personal data.
6. The complainant then contacted the Commissioner on the 4 September 2015 to complain about the council's refusal of her request. The Commissioner advised the complainant that she would firstly need to request the council to conduct an internal review before the complaint could be considered any further.
7. The complainant requested an internal review on the 25 September 2015. Her review request was based on the following argument:

*"The information I am requesting relates to the investigation into the conduct of a holder of public office, acting in that capacity at a public meeting; the investigation was paid for out of public money and is a matter of public interest to the electorate to whom the subject of the investigation was accountable. The investigation considered its subject as a public official, not as a private individual. What is the point of a Members' Code of Conduct if any complaint made under it is to remain secret?"*

8. On 9 October 2015, the council provided its internal review response upholding its original response to refuse the request under section 40(2) of the FOIA.

### **Scope of the case**

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9. The complainant contacted the Commissioner again as she does not consider the requested information should be withheld.
10. The Commissioner considers the scope of the case is to determine whether the council is able to rely on section 40(2) of the FOIA to refuse the requested information.

### **Reasons for decision**

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11. Section 40(2) of the FOIA states that:

*"Any information to which a request for information relates is also exempt if-*

*a) It constitutes personal data which do not fall within subsection (1), and*

*b) Either the first or second condition below is satisfied."*

### **Is the withheld information personal data?**

12. Personal data is defined by the Data Protection Act 1998 (the DPA) as any information which relates to a living individual who can be identified from that data or from that data along with any other information in the possession or is likely to come into the possession of the data controller.

13. The information requested in this case is for a copy of the investigation report undertaken about a code of conduct complaint about [name redacted].

14. The Commissioner is satisfied that the information falls within the definition of personal data as set out in the DPA because it 'relates to' and identifiable living individual.

### **Would disclosure contravene any of the Data Protection Principles?**

15. 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 focussed on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of disclosure against the legitimate public interest in disclosing information.

### **Reasonable expectations**

16. When a public authority discloses information under the FOIA, it is essentially disclosing information to the world and not just the person making the request.

17. (Analysis placed in a confidential Annex as the arguments themselves could reveal information that has been withheld)

18. (Analysis placed in a confidential Annex as the arguments themselves could reveal information that has been withheld)

19. (Analysis placed in a confidential Annex as the arguments themselves could reveal information that has been withheld)
20. (Analysis placed in a confidential Annex as the arguments themselves could reveal information that has been withheld)
21. (Analysis placed in a confidential Annex as the arguments themselves could reveal information that has been withheld)
22. The Commissioner is of the view that any person working in the public sector cannot expect that all of their personal data will automatically be exempt from disclosure. Also, there may be less of an expectation of privacy, to certain types of information, the more senior someone is, compare to that of a more junior person. The Commissioner notes that the individual in this case was the chair of the parish council.

### **Consequences of disclosure**

23. (Analysis placed in a confidential Annex as the arguments themselves could reveal information that has been withheld)
24. (Analysis placed in a confidential Annex as the arguments themselves could reveal information that has been withheld)
25. (Analysis placed in a confidential Annex as the arguments themselves could reveal information that has been withheld)
26. The Commissioner accepts that this could cause unwarranted distress to the individual concerned.

### **Balancing the legitimate rights of the data subjects with the legitimate interests in disclosure.**

27. The complainant has stated that the requested information is a matter of public interest as the investigation was paid for out of public money, and this was about a public official not a private individual.
28. She has also argued that elected public office holders, in this case the chair of the parish council, are accountable to the public and their electorate. Refusing this request under section 40(2) is therefore in direct conflict with the requirement for openness and accountability and would therefore render the principle of accountability meaningless.
29. The council has told the Commissioner that it has considered that the processing of personal data must be fair and not used in ways that could have unjustified adverse effects on the individual to whom the information relates.

30. The Commissioner appreciates that there is always going to be legitimate public interest regarding complaints made about a member of a public authority.
31. However, he also sees that the public interest may be satisfied to some extent when there is a formal investigation/ complaint process in place. In cases such as this one, regarding an alleged breach of the code of conduct, the council's monitoring officer is responsible for investigating complaints and determining the most suitable outcome. As explained in the council's code of conduct procedures<sup>1</sup>.
32. The Commissioner realises that with regards to requests that involve third party personal data, each request needs to be considered on a case by case basis considering the individual circumstances of that case.
33. (Analysis placed in a confidential Annex as the arguments themselves could reveal information that has been withheld)
34. Therefore the Commissioner's decision is that disclosure of the requested information would be unfair and finds that section 40(2) of the FOIA is engaged and so the council was correct to issue the refusal.

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<sup>1</sup> <https://www.northnorfolk.org/council/660.asp>

## Right of appeal

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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: 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)

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** .....

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**