

## Freedom of Information Act 2000 (FOIA)

**Date:** 27 March 2017

**Public Authority:** Pittington Parish Council  
**Address:** 14 South End  
High Pittington,  
County Durham  
DH6 1AG

### Decision (including any steps ordered)

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1. The complainant has requested copies of the resignation letters of Cllr Andrew Sowerby and anybody else who had resigned from Pittington Parish Council since May 2013. Pittington Parish Council withheld the information, citing section 40(2) (personal information) of FOIA.
2. The Commissioner's decision is that Pittington Parish Council applied section 40(2) of FOIA appropriately. However, the Commissioner considers that Pittington Parish Council has breached sections 10(1) (time for compliance) and 17(1)(b) (request for information) of FOIA.
3. The Commissioner does not require Pittington Parish Council to take any steps as a result of this decision.

### Request and response

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4. On 21 January 2016 the complainant wrote to Pittington Parish Council (PPC) and requested information in the following terms:  
  
*"I am emailing to submit a freedom of information request to see Andrew Sowerby's resignation statement. I would also like to see copies of all resignation [letters] submitted by any member resigning from the parish council sincere [sic] the May 2013 local government elections."*
5. PPC responded on 16 February 2017. It refused to provide the requested information citing the following exemption:
  - section 40(2)(personal information)

6. As PPC does not have the appropriate process to carry out internal reviews, it advised the complainant that he could complain directly to the Commissioner if he was dissatisfied with the response.

## Scope of the case

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7. Initially the complainant complained to the Commissioner because PPC had not responded to his request. There was some confusion about whether PPC had responded to this request, as it had received a request from a different requester, worded very similarly to the present one and had responded to that one. PPC responded on 16 February 2017.
8. The complainant contacted the Commissioner on 20 February 2017 to complain about the way his request for information had been handled. He explained that section 40(2) could not apply on the grounds that a member's declaration of acceptance of office and resignation statement form part of the legal process by which a member accepts and leaves office; as such these documents are not covered by section 40(2) and it is in the public interest to provide the requested information.
9. During the Commissioner's investigation, PPC explained that one of the councillor's had indicated in his resignation letter that he would be satisfied for it to be disclosed in response to a FOIA request. PPC confirmed that it had disclosed that letter to the complainant.
10. The Commissioner will therefore consider whether PPC applied section 40(2) to the remaining resignation letter appropriately and also how it handled the request generally.

## Reasons for decision

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### Section 40 – personal data

11. Section 40(2) provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and its disclosure would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (DPA).

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

12. The definition of personal data is set out in section 1 of the DPA:

*" ...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 intention of the data controller or any other person in respect of the individual."*

13. The two main elements of personal data are that the information must 'relate' to a living individual and the individual must be identifiable. Information will relate to an individual if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
14. In this case, PPC told the complainant that it considered that the resignation letter constituted the personal data of the individual concerned and that it would be unfair to disclose it.
15. The Commissioner considers that the resignation letter in question constitutes information which falls within the definition of 'personal data' as set out in section (1) of the DPA as the information comprises personal data relating to Mr Sowerby.

***Would disclosure breach one of the data protection principles?***

16. PPC told the complainant that it considered that disclosure of the requested information would contravene the first data protection principle. The Commissioner agrees that the first data protection principle is relevant in this case.

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

17. The first principle deals with the privacy rights of individuals and the balance between those rights and other legitimate interests in processing personal data. It states:

*"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –*

*(a) at least one of the conditions in Schedule 2 is met, and*

*(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met".*

18. In the case of an FOIA request, the personal data is processed when it is disclosed in response to that request. This means that the information can only be disclosed if to do so would be fair, lawful and would meet one of the DPA Schedule 2 conditions. If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.

***Would it be fair to disclose the requested information?***

19. When considering whether disclosure of personal information is fair, the Commissioner takes into account the following factors:
- the individual's reasonable expectations of what would happen to their information;
  - the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the individual concerned); and
  - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.
20. Under the first principle, the disclosure of the information must be fair to the data subject. Assessing fairness involves balancing the data subject's rights and freedoms against the legitimate interest in disclosure to the public.
21. Despite the reasonable expectation of an individual and the fact that damage or distress may result from disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in its disclosure.

***Has the data subject consented to the disclosure?***

22. The Commissioner is not aware of anything to suggest that consent has been given for disclosure of the remaining resignation letter.

***Has the data subject actively put some or all of the requested information into the public domain?***

23. Where the data subject has put some or all of the requested information into the public domain, the Commissioner considers that this weakens the argument that disclosure would be unfair.
24. In this case the Commissioner has not seen any evidence that the data subject has actively put some or all of the requested information into the public domain.

***Reasonable expectations***

25. In order to reach a view on whether the disclosure of this information would be fair in this case, the Commissioner has placed specific emphasis on the nature of the information itself.
26. The Commissioner notes the complainant's point that section 40(2) could not apply on the grounds that a member's declaration of acceptance of office and resignation statement form part of the legal

process by which a member accepts and leaves office; as such these documents are not covered by section 40(2) and it is in the public interest to provide the requested information.

27. However, she considers that the requested information, if disclosed, would reveal information about Mr Sowerby.
28. The Commissioner does not accept that disclosing this information would be fair and considers that it would be very likely to cause distress to the individual involved or have an unfair impact on him.
29. As the Commissioner considers that disclosure under the FOIA would, in effect, be a disclosure to the world at large, she does not consider that in this case, it would be fair.

### ***Consequences of disclosure***

30. In looking at the consequences of disclosure on the data subject, the Commissioner has considered what they might be.
31. The Commissioner considers that whilst a letter of resignation is about an individual's professional life, it also quite clearly has a direct effect on their personal life. Therefore she considers that the withheld information relates to both the professional and personal life of Mr Sowerby.

### ***Balancing rights and freedoms with legitimate interests***

32. The Commissioner accepts that in considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for its own sake, along with specific interests.
33. However, the interest in disclosure must be a public interest, not the private interests of the individual requester. The requester's interests are only relevant in so far as they may reflect a wider public interest. This is because, when information is disclosed under the FOIA, it is effectively disclosed to the world at large, and not only to the requester.
34. The Commissioner notes that the requested information is considered to be the personal information of Mr Sowerby.
35. Although the Commissioner can appreciate why the information might be of particular interest to the complainant, she is mindful of the fact that the FOIA is requester and motive blind. She has not seen any evidence to indicate that there is sufficient wider legitimate public interest in disclosure which would outweigh the rights and freedoms of the data subject in this case.
36. Taking all of the above into account, the Commissioner concludes that it would be unfair to the individual concerned to disclose the withheld

information and that it would therefore breach the first data protection principle.

37. The Commissioner therefore considers that PPC has applied section 40(2) appropriately.

## **Procedural matters**

### **Section 10 - Time for compliance**

38. Section 10(1) provides that a request for information should be responded to promptly and no later than twenty working days after receipt. She notes that the PPC did not respond to the present request within twenty working days and therefore considers that PPC has breached section 10(1).
39. The Commissioner also notes that PPC applied an exemption when it did respond.

### **Section 17 – Request for information**

40. Section 17(1)(b) provides that if a public authority is going to refuse to disclose information, it must state which exemption it is relying on.
41. As PPC took longer than twenty working days to explain which exemption it was relying on, the Commissioner considers that it has also breached section 17(1)(b).

## **Right of appeal**

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42. 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)

43. 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.
44. 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** .....

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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