

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 May 2023

Public Authority: Broseley Town Council
Address: The Library Building
Bridgnorth Road
Broseley
Shropshire
TF12 5EL

Decision (including any steps ordered)

1. The complainant has requested the pay grades of the Town Clerk, the Deputy Town Clerk, and the previous Locum Clerk. Broseley Town Council ("the Council") withheld the information under section 40(2) (Personal information) of FOIA.
2. The Commissioner's decision is that the Council has correctly applied section 40(2).
3. The Commissioner does not require further steps.

Request and response

4. On 23 November 2022, the complainant wrote to the Council and requested information in the following terms:
**"What are the pay grades for our two Clark
What pay grade was [redacted name] on when he was in the
role of Clark for Broseley?"**
5. The Council responded on 29 November 2022. It withheld the requested information under section 40(2), but directed the complainant to where all monthly expenditure was published (on the Council's website).

6. Following an internal review, Council wrote to the complainant on 14 February 2023. It maintained the application of section 40(2).

Reasons for decision

7. This reasoning covers whether the Council is entitled to rely on section 40(2) (Personal information) of FOIA to refuse to provide the requested information.
8. Section 40(2) provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
9. Section 3(2) of the Data Protection Act 2018 defines personal data as:
“any information relating to an identified or identifiable living individual.”
10. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
11. In this case, the complainant has requested the pay grades of two current officers (being the Town Clerk and Deputy Town Clerk), and a previously engaged Locum Clerk.
12. The Commissioner has reviewed the withheld information and is satisfied that it will represent personal data.
13. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on principle (a), which states:
“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject.”
14. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
15. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.

16. The Commissioner considers that the complainant is pursuing a legitimate interest – transparency around the Council's expenditure of public monies, and that disclosure of the requested information is necessary to meet that legitimate interest.
17. However, the Commissioner also recognises the request is seeking the personal data of past and present employees in a very small public authority, and that it will not be possible to disclose the information in an anonymised way. The Council has also provided the Commissioner with the Payscale Point (equivalent to the 'grade' of the officer), contracted hours, and salary details for the two current officers. The Council has argued that, in the circumstances of this case, the disclosure of this information would reveal significant detail about the individuals' financial and employment circumstances. The Commissioner notes that he has considered a similar situation in Decision Notice IC-129568-H6F5¹, in which he decided that the requested information (the salary of a Parish Clerk) was exempt under section 40(2).
18. The Commissioner is also aware that the Council has directed the complainant to where related information (outgoing staff salaries by month, and other payments over £500) is made available for public inspection on the Council's website². The Commissioner considers that the publishing of such information addresses the legitimate interest being pursued by the requester.
19. The Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individuals. Therefore, he considers that there is no legal basis for the Council to disclose the requested information and to do so would be in breach of principle (a).
20. The Commissioner's decision is that the Council is entitled to rely on section 40(2) of FOIA to refuse to provide the requested information. The Commissioner requires no further action to be taken by the Council in relation to this request.

¹ Available on the ICO website: <https://ico.org.uk/media/action-weve-taken/decision-notice/2022/4022523/ic-129568-h6f5.pdf>

² <https://www.broseley-tc.gov.uk/reports-and-audits>

Right of appeal

21. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

22. 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.
23. 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

Daniel Perry
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF