

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 27 November 2024

**Public Authority:** Eye Town Council

**Address:** [townclerk@eyetowncouncil.gov.uk](mailto:townclerk@eyetowncouncil.gov.uk)

#### Decision (including any steps ordered)

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1. The complainant requested a copy of the clerk's job description. Eye Town Council ("the council") relied on section 40(2) of FOIA (third party personal information) to withhold the information.
2. The Commissioner's decision is that the council was not correct to rely on section 40(2) of FOIA to withhold the information.
3. The Commissioner requires the council to take the following steps:
  - To disclose a copy of the job description to the complainant.
4. The public authority must take these steps within 30 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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5. On 28 May 2024, the complainant wrote to the council and requested information in the following terms:

“Would you please provide me with a copy of the Eye Town Council job description for the post of Town Clerk.

This will have been issued when this post was last recruited to.

For complete clarity I am not asking for any details or information that are personal to you as the current post holder or any details that are not already public. If there are any private areas then these can be redacted.”

6. The council responded on 29 May 2024. It refused the request on the basis that section 40(2) of FOI applied. The council argued that the job description formed part of the clerk’s contract, and that it was therefore personal data relating to the clerk.
7. In following correspondence, the council reiterated that the requested information is exempt under section 40(2) of FOIA.

## Scope of the case

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8. The complainant contacted the Commissioner on 24 July 2024 to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of his investigation is to establish whether the council is entitled to withhold the requested information under section 40(2) of FOIA.

## Reasons for decision

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10. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
11. In this case the relevant condition is contained in section 40(3A)(a). This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data (‘the DP principles’), as set out in Article 5 of the UK General Data Protection Regulation (‘UK GDPR’).

12. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of FOIA cannot apply.
13. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

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

14. Section 3(2) of the DPA defines personal data as:

“any information relating to an identified or identifiable living individual”.

15. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
16. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
17. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
18. In the circumstances of this case the Commissioner is satisfied that the information is personal data relating to the clerk. It is a job description which provides details of the work expected of the current clerk. The information can therefore be associated with the current clerk and their role at the council.
19. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
20. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
21. The most relevant DP principle in this case is principle (a).

## Would disclosure contravene principle (a)?

22. Article 5(1)(a) of the UK GDPR states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.

23. 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.

24. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

## Lawful processing: Article 6(1)(f) of the UK GDPR

25. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”<sup>1</sup>.

26. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under FOIA, it is necessary to consider the following three-part test:-

- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
- ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;

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<sup>1</sup> Article 6(1) goes on to state that:-

“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.

- iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
27. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

### **Legitimate interests**

28. In considering any legitimate interests in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interests can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
29. The Commissioner recognises that the public has a legitimate interest in the council being transparent about the role and responsibilities of the position of clerk at the council. In town councils, the clerk is often the primary person who is responsible for advising councillors of the legal requirements of their (i.e. the councillor's) role and the overall legal processes which the council must follow. They will be also responsible for ensuring that due process is followed by the council and appropriate scrutiny documents are completed appropriately. They are also likely to be public facing, and to deal with many matters raised by the public.
30. A disclosure of the job description will reflect these requirements, and add greater transparency over the work that town clerks are relied upon to carry out in their position.

### **Is disclosure necessary?**

31. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
32. The Commissioner is satisfied that in order to service the legitimate interests which have been identified it would be necessary for that information to be disclosed.

33. The Commissioner is therefore satisfied in this case that there are no less intrusive means of achieving the legitimate aims identified.

**Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms**

34. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.

35. In considering this balancing test, the Commissioner has taken into account the following factors:

- the potential harm or distress that disclosure may cause;
- whether the information is already in the public domain;
- whether the information is already known to some individuals;
- whether the individual expressed concern to the disclosure; and
- the reasonable expectations of the individual.

36. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.

37. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.

38. The Commissioner firstly notes that the clerk has indicated that they did not expect that that information would need to be disclosed in response to an FOI request. However, beyond the individual's stated expectations, the Commissioner must also consider whether that expectation was reasonable under the circumstances of the case.

39. The clerk's job description would be available when the position is advertised – it is key information which allows applicants to decide whether they have appropriate skills for the position, and to best demonstrate these to the council in their application and interview. This allows those conducting the interviews to better sift through the applications they receive and make a better, more informed decision. At the time that the role is advertised, therefore, the job description will be available to the public to view.

40. Secondly, and as noted above, there is an onus on an authority to disclose information of this sort in order to demonstrate that the role encompasses all of the tasks which would normally be associated with a position of this nature. Given that the clerk is responsible for some of the legal and financial requirements on town council's the role requires specific skills and tasks are performed.
41. The Commissioner notes that the clerk has concerns that a disclosure of the job description will be intrusive and that her personal data may be misused. However, the job description is primarily a description of the role, rather than a description of the person in that role, albeit that some information might be identified about the person from the disclosed information – for instance that they have the necessary skills, experience or qualifications to carry out the tasks described.
42. The information contained in the job description is generic to the post of Town Clerk, and the council has not sought to argue that there is any unique biographical significance to the current clerk in this case. The Commissioner has found no part of the document to have been written solely with the current clerk in mind.
43. The information itself relates to a senior, public facing officer of the council, and as such, the Commissioner considers that the public would have a legitimate interest in knowing what the duties of the Town Clerk are. It is also information which would normally be provided to applicants when any vacancy for the role arises.
44. In conclusion, the Commissioner considers that, although information can be identified about the current clerk, as outlined above, it is generic and entirely relates to the duties of that role. It could equally apply to a number of town clerks carrying out similar roles in other councils.
45. The Commissioner has found nothing in the arguments advanced by the council which support its position that a disclosure of the job description would be unfair to the clerk.
46. The Commissioner therefore considers that the legitimate interests which have been identified outweigh the arguments for the information being withheld.
47. His decision is therefore that the council was not correct to rely on section 40(2) to withhold the job description from disclosure.

## **Right of appeal**

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48. 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](mailto:grc@justice.gov.uk)

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

49. 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.
50. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Ian Walley**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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