

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 18 December 2024

**Public Authority:** Cowbridge and Llanblethian Town Council  
**Address:** Town Hall  
Cowbridge  
Vale of Glamorgan  
CF71 7DD

#### **Decision (including any steps ordered)**

---

1. The complainant requested from Cowbridge and Llanblethian Town Council (the Council) information regarding an investigation report that was written and sent to the Council. The request was refused and the Council relied on sections 40(2) (personal information) and 41 (information provided in confidence) of FOIA.
2. The Commissioner's decision is the Council was entitled to rely on sections 41(1) of FOIA to refuse to provide the information requested. Therefore, the Commissioner does not require the Council to take any steps as a result of this decision.

#### **Background**

---

3. The Council informed the Commissioner the request is for release of a report prepared by an independent consultant, and from the Council's HR and Governance Support that investigated a grievance raised by [name redacted] and [name redacted].
4. Having viewed the complainant's correspondence containing his request, the Commissioner notes it relates to an investigation conducted by the Council. The complainant had made it clear to the Council he is seeking the decided outcomes from this report.

## Request and response

---

5. On 8 March 2024, the complainant wrote to Council and requested information in the following terms:

“Therefore, I would like a copy of the report that was written and sent to the Town council by [name redacted] under the Freedom of information act 2000...”

6. On 21 March 2024 the Council responded and refused the request under sections 40(2) and 40(5) of FOIA. The Council stated the reason for refusal was based on a decision notice<sup>1</sup> issued in June 2018 relating to a request about a disciplinary hearing.
7. On 22 April 2024 the complainant asked for an internal review.
8. On 12 June 2024 the Council provided its review response and withheld the information under sections 40(2) and 41 of FOIA. It did not mention section 40(5) of FOIA which the Council had originally cited.

## Reasons for decision

---

9. This reasoning covers why the Council was entitled to rely on section 41(1) of FOIA to refuse to provide the requested information.

## Section 41 – Information provided in confidence

10. Information is exempt from disclosure if it was obtained by the public authority from any other person (including another public authority), and the disclosure of the information to the public would constitute a breach of confidence actionable by that or any other person.
11. The withheld information under section 41(1) in this case is the full investigation report. The investigation was conducted and the report compiled by [name redacted]. The Commissioner is satisfied that the information (the report) is information obtained from another person.
12. When determining if disclosure of information constitutes an actionable breach of confidence, the Commissioner will consider the following:

---

<sup>1</sup> <https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2259194/fs50719733.pdf>

- whether the information has the necessary quality of confidence;
  - whether the information was imparted in circumstances importing an obligation of confidence; and
  - whether disclosure would be an unauthorised use of the information to the detriment of the confider.
13. The Commissioner finds that information will have the necessary quality of confidence if it is not otherwise accessible to the general public, and if it is more than trivial. In this instance the information is clearly not trivial as it relates to allegations (claims of bullying) by individuals about a member of staff. The Commissioner accepts the issue of bullying is a subject that may cause significant and heated discussion.
14. The withheld information would have been imparted in circumstances giving rise to an obligation of confidence. The Commissioner is satisfied there is an implicit obligation of confidence where information is provided, in this instance, by individuals that reported their concerns to the Council.
15. The Commissioner is satisfied that details of the investigation report would reveal the identities of the individuals, and is likely to identify the individuals about whom concerns were raised. This would contain information imparted in circumstances importing an obligation of confidence. The Commissioner therefore considers the withheld information will retain the necessary quality of confidence owed to the individuals that reported their concerns.
16. The Commissioner is mindful of the test of confidence set out by Judge Megarry at the High Court of Justice in *Coco v AN Clark (Engineers) Limited* [1968] FSR 415, specifically:
- “...if the circumstances are such that any reasonable man standing in the shoes of the recipient of the information would have realised, that upon reasonable grounds the information was being given to him in confidence then this should suffice to impose upon him the equitable obligation of confidence”.
17. Regarding the third element required to bring an action for a breach of confidence, the Commissioner considers there would be detriment to third parties if there was an unauthorised use of the information. This would be to individuals that brought their concerns to the Council and contributors to the report.

18. Section 41 of FOIA is an absolute exemption and is not subject to the public interest test. However, the common law duty of confidence contains an inherent public interest test. This test assumes that a public authority should not disclose the information unless the public interest in disclosure outweighs the public interest in maintaining the duty of confidence.
19. The Commissioner accepts there is a general public interest in public authorities being open and promoting transparency and accountability. In this case, the matter concerns an investigation report about allegations (claims of bullying) within the Council, and the specific actions taken to address recommendations.
20. The Commissioner considers there is greater public interest in the Council being able to retain trust in not revealing confidential information. There is not sufficient public interest in this case to warrant the Council breaking the obligation of confidence.
21. The Commissioner is mindful of the wider public interest in preserving the principle of confidentiality. He recognises the Council has taken the view that breaches of confidentiality goes against the agreement it had with [name(s) redacted] at the start of the investigation.
22. Having considered all the circumstances of this case, and the withheld information, the Commissioner's decision is there is a stronger public interest in maintaining the obligation of confidence than in disclosing the information. He does not consider there are compelling reasons for overriding the duty of confidence in this case.
23. The Commissioner is satisfied the information meets the conditions under section 41(1) of FOIA, and the Council was entitled to rely on this exemption to withhold the information. As section 41(1) applies to the entire report, it is not necessary to consider the Council's application of section 40(2) of FOIA.

## Right of appeal

---

24. 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)

25. 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.
26. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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