

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **29 May 2025**

Public Authority: **Newby and Scalby Town Council**

Address: **445B Scalby Road
Scarborough
North Yorkshire
YO12 6UA**

Decision (including any steps ordered)

1. The complainant requested a copy of a report from Newby and Scalby Town Council ("the Council") about how the Council had managed a charitable grant. The Council has withheld the whole report under both section 32 of FOIA (court records, etc.) and section 40(2) of FOIA (personal information).
2. The Commissioner's decision is that:
 - The Council is not entitled to rely on section 32 to withhold any information within the report;
 - The Council is entitled to withhold only a small amount of information within the report under section 40(2).
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Disclose the report, except for the following information which can be withheld under section 40(2) and therefore should be redacted:
 - all names and initials of individuals,
 - the first sentence of the final paragraph on page six of the report (which is page seven of the PDF document),
 - the final six words of the penultimate sentence in the third paragraph on page ten of the report (which is page eleven of the PDF document).

4. The Council 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

5. On 23 August 2024, the complainant wrote to the Council and requested information in the following terms:

"...I request an appropriately redacted copy of the Maoni report."

6. The Council responded on 16 September 2024. It stated that it had handled the request under the EIR as the information requested is environmental information as defined in regulation 2(1)(f) of the EIR. It refused to provide the requested information citing regulations 12(3) (third party personal data) and 12(5)(d) (confidentiality of proceedings).
7. The complainant requested an internal review on 22 September 2024. When doing so, amongst the other points that they raised, they stated that they dispute that the information requested is environmental information, they therefore disagree that the EIR is the correct access regime.
8. Following an internal review the Council wrote to the complainant on 17 October 2024. It revised its position to withhold the whole report under section 40(2) of FOIA (third party personal data).

Scope of the case

9. In its submissions to the Commissioner the Council also cited an additional exemption. It stated that the report was exempt from disclosure under section 32 of FOIA (court records, etc.). Specifically, it stated that it held the requested report only for the purposes of an employment tribunal at the time of the request.

Reasons for decision

Section 32 - Court records, etc.

10. Section 32(1) states that:

"Information held by a public authority is exempt information if it is held only by virtue of being contained in-

- (a) any document filed with, or otherwise placed in the custody of, a court for the purposes of proceedings in a particular cause or matter,
- (b) any document served upon, or by, a public authority for the purposes of proceedings in a particular cause or matter, or
- (c) any document created by-
 - i. a court, or
 - ii. a member of the administrative staff of a court, for the purposes of proceedings in a particular cause or matter."

11. The Council's position is that, although not originally created for the purpose of an employment tribunal, at the time of the request it held the requested report only for the purposes of an employment tribunal.
12. The Commissioner accepts that at the time of the request the Council held the requested report for the purposes of the employment tribunal. In order for the exemption at section 32(1)(a) to be engaged, the Council must demonstrate that, at the time of the request, the report was held for this purpose alone.
13. In its submissions to the Commissioner the Council described the purposes for which the report was originally produced as follows:

"to assist Council with investigating non-compliance with terms of a grant and surrounding issues. Council used the report to assist in its decision-making process in respect of a redundancy."
14. The Commissioner has considered the contents of the withheld report. He notes that it is dated January 2024, the same year that the request was made. He also notes that the last sentence of the background of the report states that part of its purpose was "to learn lessons for future governance and administration by the Council" and that the report contains five recommendations for the Council.
15. In its submissions to the Commissioner, the Council acknowledged that, "the report highlights governance failures, financial mismanagement, and procedural oversights".
16. In the course of his investigation the Commissioner asked the Council to explain why, if it were not for the employment tribunal, it would no longer have needed this information about lessons learned after a

serious failing less than a year after the report was produced. He also asked the Council to confirm whether all the recommendations had been fully implemented by the time of the request.

17. The Council stated that, by the time of the request, four of the five recommendations from the report had been implemented, with the fifth expected to be implemented in 2025.
18. In the Commissioner's view, the Council has not provided any credible explanation as to why the information within the report was no longer needed for its own purposes, beyond the employment tribunal, at the time of the request.
19. The Council does appear to be suggesting within its submissions to the Commissioner that the subject of the report is the failings of the individual to whom the employment tribunal relates. However, having seen the report the Commissioner's view is that it is clear that the subject of the report is the Council as a whole.
20. The Commissioner's view is that it is clear that, at the time of the request, the report was still held by the Council "to learn lessons for future governance and administration by the Council", which is stated within the report itself as one of the reasons the report was produced. At the time of the request the Council was still in the process of implementing the recommendations of the report.
21. The Commissioner's decision is that the report was not held solely for the purposes of the employment tribunal at the time of the request and therefore the exemption at 32(1)(a) of FOIA is not engaged.
22. As the Commissioner has found that the Council is not entitled to withhold the report under section 32, he will go on to consider whether the Council is entitled to withhold it under section 40(2).

Section 40(2) – Personal information of an individual other than the applicant

23. Section 40(2) provides an exemption for information that is the personal data of an individual other than the applicant and where the disclosure of that personal data would be in breach of any of the data protection principles.
24. The Council has withheld the entire report under this exemption. The report in question is a report, produced by Maoni Consulting, about how the Council had managed a charitable grant from the Woodsmith Foundation.

Is the information personal data?

25. Section 3(2) of the Data Protection Act 2018 defines personal data as: "any information relating to an identified or identifiable living individual."
26. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
27. The Commissioner accepts that the report contains the personal data of several individuals. However, the majority of the information in the report is not personal data.
28. The report is split into three main sections, the background of the grant / project, findings about how the grant / project were managed and recommendations for the Council.
29. The majority of information does not refer to any specific individual. Instead it refers to general information about the project / the grant or relates to the Council as a whole rather than any specific individual. The Commissioner's decision is that all information within the report which does not refer to a specific individual is not personal data and therefore for this information the exemption is not engaged.
30. Several specific individuals are named within the report, or referred to by their job titles. The Commissioner accepts that the information within the report that specifically refers to them is the personal data of those individuals. This is because this information relates to them and they are identifiable. The Commissioner accepts that even when actions are ascribed to the person by their job title rather than by names, these individuals are identifiable.

Would disclosure contravene principle (a)?

31. 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."
32. 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.
33. 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.

Legitimate interests

34. The Council stated in its submissions to the Commissioner that it had not identified any legitimate interest in disclosure. However, in its own submissions to the Commissioner it also acknowledged the following regarding the content of the report:

"The report highlights governance failures, financial mismanagement, and procedural oversights within [the Council] regarding the Woodsmith Foundation grant".

35. Given the subject matter of the report, the Commissioner's view, having seen a copy of the report, is that there is a very strong legitimate interest in disclosure of the withheld information in order to provide transparency about this extremely serious matter. Specifically, to provide transparency over what went wrong and the recommendations for improvements to prevent similar issues occurring in the future.

Is disclosure necessary?

36. The Commissioner accepts that disclosure of the vast majority of the personal data within the report is necessary to meet this legitimate interest.

37. However, he does not consider that the disclosure of the names and initials of individuals within the report is necessary to provide transparency over the causes of the Council's failings. The individuals whose names and/or initials are included are all also referred to by their job title / position. The Commissioner has already accepted that these individuals are identifiable from their job titles so he is not suggesting that not disclosing the names and job titles will provide anonymity.

38. However, he is of the view that while disclosure of the job titles within the report is necessary to understand specifically what went wrong and what the recommendations for improvement are, disclosure of the corresponding names / initials would not further aid this transparency.

39. The Commissioner's decision is therefore that the Council is entitled to withhold all names and initials of individuals within the report under section 40(2) of FOIA.

40. The Commissioner will now go on to consider the balancing test for the personal data within the report other than names and initials.

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

41. 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.
42. 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.
43. 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.
44. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
45. The Commissioner considers that one piece of information about one of the individuals identified in the report can be considered to relate to their personal as well as their professional life. The Commissioner's view is that this individual would not have a reasonable expectation that this information would be disclosed to the world at large. The Commissioner's view is that for this piece of information, which is included twice in the report, the rights and freedoms of the data subject outweigh the legitimate interest in disclosure.
46. The Commissioner's decision is therefore that the Council is entitled to withhold the first sentence of the final paragraph on page six of the report (which is page seven of the PDF document) and the final six words of the penultimate sentence in the third paragraph on page ten of the report (which is page eleven of the PDF document).

47. The Commissioner's view is that the remainder of the personal data within the report relates to the professional roles of those individuals identified, rather than their personal lives.
48. In its submissions to the Commissioner, the Council argued that disclosure of the report could result in reputational damage and emotional distress for those identified in the report. It argues that several individuals are linked directly to errors in financial oversight, project execution, and governance adherence.
49. It also argued, "sensitive financial and administrative details within the report could lead to unwarranted scrutiny or misinterpretation by the public or media, potentially escalating tensions within the local community".
50. The Commissioner has carefully considered the potential harm or distress that disclosure may cause to the individuals identified in the report. However, as stated in paragraph 35 above, the Commissioner considers that there is a very strong legitimate interest in disclosure of the withheld information in order to provide transparency about this extremely serious matter. Specifically, to provide transparency over what went wrong and the recommendations for improvement.
51. While disclosure may well lead to further scrutiny, there is nothing to suggest that this would be unwarranted, given the subject of the report.
52. In addition, the Commissioner notes that the roles of the individuals in question are all relatively senior roles within the Council, which come with a greater expectation of accountability.
53. The Commissioner therefore considers that, other than for the information described in paragraph 46 of this notice, the legitimate interests which have been identified outweigh the arguments for the information being withheld.
54. His decision is therefore that the council was not correct to rely on section 40(2) to withhold the majority of the information within the report, although it was entitled to withhold all names and initials within the report and the information described in paragraph 46 of this notice under this exemption.

Right of appeal

55. 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)
General Regulatory Chamber
PO Box 11230
Leicester
LE1 8FQ

Tel: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

56. 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.

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

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