

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 October 2014

Public Authority: Wirral Metropolitan Borough Council

Address: Wallasey Town Hall
Brighton Street
Wallasey
Wirral
CH44 8ED

Decision (including any steps ordered)

1. The complainant has requested information from Wirral Metropolitan Borough Council ("the council") about the departure of a council officer. Following steps ordered in a previous decision notice (FS50491264), the council subsequently disclosed some information but withheld the remainder under the exemption provided by section 40(2) of the Freedom of Information Act ("the FOIA").
2. The Commissioner's decision is that the council has correctly applied section 40(2).
3. The Commissioner does not require any steps to be taken.

Request and response

4. On 18 October 2012, the complainant wrote to the council and requested the following:

"1. Please provide all information you have which is connected to the departure of [redacted name]. This will relate to meetings, hearings, discussions, and may be stored in the form of recorded minutes, verbatim and non-verbatim notes, emails, letters, memos, aide memoirs, whether electronically or manually stored."

2. Please confirm and provide details of the existence of any payments made to [redacted name] in relation to his departure. This will include precise amounts, the method of payment and the budget from which the payment was derived.

3. Please confirm details of the existence of any "compromise agreement" or "confidentiality agreement" signed by [redacted name] in relation to this departure or to his involvement in abuse or malpractice. This will include confirmation and description of any 'gagging clauses' and whether a positive / neutral / negative reference was provided regarding potential future employment.

4 In light of the [strangely] recent discovery by Wirral's NOW EX-[redacted position / name] that "compromise contracts" were NOT being recorded but were being arranged behind closed doors, beyond any councilor scrutiny and beyond view of the public: <http://democracy.wirral.gov.uk/documents...>

Please describe the exact process that was followed and supply the documents, reports, aide memoirs, notes, etc. that were created and recorded as part of the NEW process. Please take a deep breath before you do this, and ponder your overriding duty to act not out of self-interest, but fairly and impartially in the unbending service of us the public.

5. Please provide the names and addresses of all organisations /bodies involved in providing legal advice to [redacted name]. Please also provide details of meetings which occurred including times, dates and matters discussed.

6. Please confirm the details of any disciplinary charges either planned or levelled against [redacted name] in relation to any failures /malpractice / abuse which brought about his departure from the Council.

7. If [redacted name] was provided with a "clean bill of health" regarding his time served at the council, please provide a copy of this /these document(s).

Please redact documents as you see fit, and remove any personally sensitive information in accordance with the requirements of the Data Protection Act."

8. Please confirm which meetings have taken place. Presumably there

will have been at least one gathering called to scrutinise the so-called "compromise contract" that was drawn up and agreed."

5. Following the Commissioner ordering steps in decision notice FS50491264, the council provided a response to the complainant on 8 November 2013, in which it disclosed some information and withheld the remainder under section 40(2).
6. The council subsequently provided an internal review on 29 November 2013 in which it maintained its position.

Scope of the case

7. The complainant contacted the Commissioner on 11 December 2013 to contest the council's response.
8. The Commissioner considers that the scope of this case is the determination of whether the council has correctly applied the exemption provided by section 40(2).

Reasons for decision

Section 40(2) – Third party personal data

9. Section 40(2) provides that:

"Any information to which a request for information relates is also exempt information if–

- (a) it constitutes personal data which do not fall within subsection (1), and*
- (b) either the first or the second condition below is satisfied."*

Section 40(3) provides that:

"The first condition is–

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene–*
 - (i) any of the data protection principles..."*

Is the withheld information personal data?

10. Personal data is defined by section 1 of the Data Protection Act 1998 ("the DPA") as:

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

11. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA. In this instance the Commissioner has reviewed the withheld information, comprised of a compromise contract and email correspondence with the council's human resources department, and has identified that it specifically relates to a named individual and their departure from the council's employment. On this basis, the Commissioner accepts that the information in its entirety is the personal data of the named individual.

Would disclosure breach the data protection principles?

12. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
13. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations of the data subject

14. When considering whether a disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
15. In this case the council has proposed that the named individual, who was previously a senior council officer, would not have a reasonable

expectation of their personal data being disclosed into the public realm. This is because the withheld information pertains to the termination of the named individual's employment, and includes the context in which it took place and discussion between the individual and council.

16. However, the complainant has advised the Commissioner that he considers the responsibility held by the individual within the council would suggest an enhanced need for transparency around their departure and any agreed terms.

The consequences of disclosure

17. The council considers that the disclosure of the withheld information would have an unjustified adverse effect on the named individual, whose rights and freedoms as a data subject would be interfered with should the information, which relates specifically to the termination of their employment, be disclosed.
18. On the other hand, it is clear from the complainant's request that he considers that the disclosure of the requested information would provide public assurance that the terms of the individual's departure had been subject to proper scrutiny.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

19. The council has explained that it considers the legitimate public interest in the departure of the individual, including the public cost, has been addressed through the prior disclosure of information, which included a report issued by the Employment and Appointments Sub-Committee, and an Appendix referred to within the report. The council has elaborated that it has released that information after having considered the decision reached in *Gibson v Information Commissioner and Craven District Council* (EA/2010/0095), in which the Information Tribunal found that the legitimate interest of the public only outweighed the prejudice to the rights, freedoms or legitimate interests of the individual concerned to the extent that the information concerns the use of public funds. However, the council's view is that the release of further contextual information regarding the individual's departure, including discussion that took place about this, would interfere with the rights, freedoms and legitimate interests of the individual.
20. In contrast with this, the Commissioner has noted the complainant's position that the senior status of the individual would attract a far greater expectation of transparency in respect of their departure.
21. In decision notice FS50438500 the Commissioner considered the distinction between information about the public role of an individual,

and information about the individual's employment that was likely to be held within personnel files. As explained in that decision, the Commissioner and the First-tier Tribunal have previously placed a strong weight on the disclosure of personal information where this relates to the accountability of actions by senior public or civil servants in their official capacity. In the circumstances of this case, the requested information relates to the departure of the individual from their employment and discussion around this. Additionally, while the Commissioner appreciates the complainant's position that the individual should expect a greater level of transparency in the circumstances of their departure, he considers that the public interest in the matter has been addressed through the disclosure of the public cost of the departure and the scrutiny undertaken by the Employment and Appointments Sub-Committee.

Conclusion

22. There is always some legitimate public interest in the disclosure of any information held by public authorities. This is because disclosure of information helps to promote transparency and accountability amongst public authorities. This in turn may assist members of the public in understanding decisions taken by public authorities and perhaps even to participate more in decision-making processes.
23. Having considered the circumstances of this case, the Commissioner has concluded that releasing the withheld information would not be within the expectations of the individual to whom it pertains. This is because the information represents the context behind the termination of an individual's employment.
24. The associated report and the public cost of the individual's departure have already been disclosed, and the Commissioner considers that this disclosure is proportionate to the position that the individual held within the council.
25. The Commissioner has therefore concluded that disclosing the withheld information would not be fair under the first principle of the DPA, and that the exemption provided by section 40(2) is engaged.

Right of appeal

26. 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

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

27. 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.
28. 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

Andrew White
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