

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

### **Decision notice**

**Date:** 11 March 2014

**Public Authority:** Basingstoke and Deane Borough Council

**Address:** Civic Offices  
London road  
Basingstoke  
Hampshire  
RG21 4AH

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

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1. The complainant has requested information regarding councillors who are members of the Local Government Pension Scheme (LGPS). Basingstoke and Deane Borough Council (the council) provided some of the information requested but withheld the remainder, relying on section 40(2) of the FOIA, as it considered it to be personal data and therefore exempt.
2. The Commissioner's decision is that the council has correctly relied on section 40(2) of the FOIA in this case. He does not require the council to take any steps.

### **Request and response**

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3. On 23 August 2013, the complainant wrote to the council and requested information in the following terms:

*"Can I please make a request for the following information:*

*For the financial year 2012-2013:*

*\*The number of BDBC Councillors who are members of the Local Government Pension Scheme.*

*\*The names of those councillors.*

*\*The total employer contributions by BDBC for the above (I.e. the cost to BDBC for the above councillors to be members of the scheme)."*

4. The council responded on the 23 September 2013 and provided the information except for the names of the councillors. It considered the names of the councillors to be exempt from disclosure under section 40(2) of the FOIA. However it did release the names of the 5 councillors who had given their consent for their names to be provided.
5. The complainant requested an internal review on the 23 September 2013 for the remaining 6 councillor's names. The council provided its internal review on the 11 October 2013. It maintained its position not to provide the names of the councillor's whose consent they did not have.

### **Scope of the case**

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6. The complainant contacted the Commissioner as he is not satisfied that the council has refused part of his request.
7. The Commissioner considers the scope of the case to be whether the council is correct to rely on section 40(2) of the FOIA to refuse to provide the names of the councillors, who are members of the LGPS, who have not given their consent for their names to be released under the FOIA.

### **Reasons for decision**

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8. Section 40(2) of the FOIA states that:

*"Any information to which a request for information relates is also exempt 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."*

9. Section 40(3) states that:

*"The first condition is –*

*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 that under this Act would contravene –*

*(i) any of the data protection principles"*

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

10. Personal data is defined by the Data Protection Act 1998 (DPA) as any information which relates to a living individual who can be identified from that data along with any other information in the possession or is likely to come into the possession of the data controller.
11. The Commissioner is satisfied that the withheld information falls within the definition of personal data as set out in the DPA because it 'relates to' identifiable living individuals.

### **Would disclosure contravene any of the Data Protection Principles?**

12. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of disclosure against the legitimate public interest in disclosing information.

### **Reasonable expectations.**

13. The withheld information is the names of councillors who are members of the Local Government Pension Scheme. The council has explained to the Commissioner that at the time of joining the LGPS, the councillors had no reasonable expectation that the information would be made public and that the Authorities (Members Allowance)(England) Regulations 2003 make no reference to disclosure of this information.
14. The council consider that the information relates to the councillors public lives. It is of the opinion that certain information about councillors will be made public such as decisions made by councillors, the register of interests and their expenses. But the decision to be a member of the LGPS is an individual decision made by councillors in respect of their private provision for future retirement.
15. The council state that it holds this personal information for the purpose of administering the pension provision of the councillors who have chosen to join the LGPS. The release of their names would be a separate, unrelated and unexpected purpose.
16. The council state that the councillors have confirmed that they had no expectation that this information would be disclosed into the public domain and had they known the information would be disclosed, a different decision to join the LGPS may have been made.

17. The council also considered section 12 of the Code of Recommended Practice for local Authorities on data Transparency. The council is required to publish the salaries of senior officers, who are defined as:

*"Senior employee salaries' is defined as all salaries which are above £58,200 and above (irrespective of post), which is the Senior Civil Service minimum pay band."*

18. It therefore considers that as councillors do not earn above this pay band, it this increases their expectation that the withheld information would not be released.
19. The Commissioner is of the opinion that individuals would generally have a reasonable expectation that their personal financial information about them would not be disclosed. At the same time the Commissioner considers public sector employees and particularly elected representatives should expect that some information about their roles, decisions they make and their remuneration to be put in the public domain.
20. The Commissioner sees that a distinction can be drawn between the amounts of information a junior staff member should expect to be disclosed about them, which would be less than what a senior member of staff should expect.

The Commissioner understands that councillors are not employees and do not have a specific rank within a local council. They are however elected representatives of the local community and as such, this brings a position of responsibility.

### **Consequences of disclosure.**

21. The council are of the opinion that as this information relates to the councillors personal life, that the release of their names would cause some distress to them and it has stated that some of the councillors' have expressed this concern themselves.
22. The Commissioner does see that the release of this information would release councillor's personal financial decisions. Therefore he considers that it is probable that disclosure would cause some distress to the individuals.

### **Balancing the rights and freedoms of the data subjects with the legitimate interests in disclosure.**

23. The council has stated that it has taken into account the public interest in transparency and accountability, particularly in relation to the spending of public funds. It considers that as it has released the number

of councillors who are members of the LGPS and the total number of contributions made it satisfies the public interest in knowing how public money is being spent.

24. The complainant considers that a councillor's decision to be a member of the LGPS is a decision to claim a benefit directly linked to their elected capacity, and this involves the expenditure of public money.
25. The complainant states that the details of all other monetary benefits that councillors receive are freely available on the council's website and their allowances are published annually. He considers that the similarity between a councillor taking an allowance and claiming a pension is so great that councillor's should expect this information to be made public.
26. The complainant states that the information released by the council only relates to the total cost and participation of the LGPS. It therefore does not allow the public to scrutinise the decisions of individual councillors to join the LGPS, and their individual choice to spend public money in this way.
27. The Commissioner is of the opinion that there is a public interest in knowing how public money is being spent. He also acknowledges that public authorities and its employees, or in this case councillors, need to be able to account for and be transparent to their actions and/ or decisions for the spending of these funds.
28. The Commissioner also considers the degree of accountability and transparency will change to a lesser or greater degree, depending on the circumstances of the individual case.
29. The Commissioner agrees that councillors are making a choice to claim an allowance and other benefits, just as they make the choice to join the LGPS. The difference is that, in the Commissioner's view, benefits and allowances are there to be claimed to aid a councillor in their public duties. The LGPS is there for councillors, who choose it, as part of making provisions for their future relating to their private life.
30. Information relating to an individual's private life does carry more weight towards maintaining privacy, in the Commissioner's view.
31. In this case the Commissioner does not consider that the public interest in being able to scrutinise individual councillors for choosing to make future provisions for their personal life, which they are lawfully entitled to do, outweighs the councillor's rights to privacy. Albeit that public money is involved.
32. The Commissioner considers the public interest, in this case, is far greater in knowing how much money in total is being spent on the LGPS

and the amount of councillor's choosing to be in it. As the council has already provided this information, the Commissioner is satisfied that the council has correctly applied section 40(2) of the FOIA to withhold the remaining information in this case.

## Right of appeal

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33. 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: 0116 249 4253

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

34. 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.
35. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**