

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

### **Decision notice**

**Date:** 27 May 2014

**Public Authority:** Portsmouth City Council  
**Address:** Civic Offices  
Guildhall Square  
Portsmouth  
PO1 2AL

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

---

1. The complainant has requested a copy of a report compiled by a QC on Councillor Mike Hancock CBE MP concerning the alleged sexual assaults on a vulnerable constituent. The Commissioner's decision is that Portsmouth City Council has correctly applied the exemption for personal data at section 40(2) of the FOIA. He does not require any steps to be taken to ensure compliance with the legislation.

#### **Request and response**

---

2. On 17 September 2013, the complainant made the following request via the WhatDoTheyKnow website<sup>1</sup>:

"Please provide me with a copy of the report compiled by Nigel Pascoe QC on Councillor Mike Hancock CBE MP concerning the alleged sexual assaults on a vulnerable constituent. This report was paid for by public money (taxes), and the matter the report deals with is most certainly in the public interest, also Councillor Hancock is a public figure. The reason for this Freedom of Information request is because it has been reported on the BBC South Today programme that a cover

---

<sup>1</sup> [https://www.whatdotheyknow.com/request/report\\_on\\_councillor\\_mike\\_hancoc#outgoing-313143](https://www.whatdotheyknow.com/request/report_on_councillor_mike_hancoc#outgoing-313143)

up of these events is in progress. If this is the case then it is even more important that this report is made public to protect constituents in Portsmouth South and Fratton Ward from a public figure who may be a sexual predator.”

3. The council responded on 16 October 2013 and refused to provide the requested information citing the exemption for personal data at section 40(2) of the FOIA.
4. The complainant requested an internal review on 16 October 2013. The council provided its internal review on 14 November 2013 in which it maintained its original position in relation to section 40(2) and also applied the exemption for law enforcement at section 31 of the FOIA.

### **Scope of the case**

---

5. The complainant contacted the Commissioner on 16 November 2013 to complain about the way his request for information had been handled. In particular, he said that a serious cover up of the matter is in progress and it is a case where “we have a public figure and an expensive investigation about his sexually molesting a vulnerable client, paid for with taxpayer’s money, and the public is being denied access to the report which is a matter of serious public interest.”
6. During the course of the investigation, the complainant contacted the Commissioner stating that the report has been released in full on the internet and therefore there is no point in the council still refusing to publish it. He provided a link to the website containing the report<sup>2</sup>. The Commissioner notes that the version of the report on that website is significantly redacted but nevertheless, and more importantly, he considers that this decision must be based on the situation at the time of the request at which point there is no suggestion that the report was in the public domain.
7. The Commissioner has considered the council’s application of section 40(2) to the requested information at the time of the request.

---

<sup>2</sup> <http://order-order.com/2014/01/22/the-mike-hancock-report-that-the-libdems-hid/#comments>

8. As the Commissioner has decided that section 40(2) applies to the requested information, he has not deemed it necessary to consider the application of section 31.

## **Reasons for decision**

---

### **Section 40(2)**

9. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the Act would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').
10. In order to rely on the exemption provided by section 40(2), the requested information must therefore constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as follows:

““personal data” means 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 intentions of the data controller or any other person in respect of the individual.”
11. 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 data protection principles under the DPA. The Commissioner notes in this case that the council argued that disclosure would breach the first data protection principle.
12. The first data protection principle states that:

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

  - (a) at least one of the conditions in schedule 2 is met, and
  - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”

**Is the withheld information personal data?**

13. As explained above, the first consideration is whether the withheld information is personal data. The information is a report into allegations of sexual impropriety by a Member of Parliament ('MP') on a constituent. It contains information about both the MP and the alleged victim and her family. Therefore the Commissioner is satisfied that the report constitutes the personal data of these parties.

**Is any of the information sensitive personal data?**

14. Section 2 of the DPA defines sensitive personal data as personal data which consists of information on the following:
- an individual's mental or physical health,
  - their political opinions,
  - their sex life,
  - their racial or ethnic origin
  - their religious beliefs
  - whether they are a member of a trade union
  - the commission or alleged commission of an offence by them, or any proceedings for any offence they have committed or are alleged to have committed.
15. The Commissioner accepts that much of the personal data falls into one or more of the above categories, and therefore constitutes sensitive personal data about the parties.

**Does the disclosure of the information contravene any of the data protection principles?**

16. The council considers that the disclosure of the information would contravene the first data protection principle. This states that:
- "Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –
- (a) at least one of the conditions in Schedule 2 is met, and
  - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met".

17. In deciding whether disclosure of this information would be unfair, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subjects, the consequences of disclosure on those data subjects and balanced the rights and freedoms of the data subjects with the legitimate interests in disclosure.

### **Nature of the information and reasonable expectations**

18. The council said that due to the nature of the content of the report, it does not believe that it would be in any of the individual's reasonable expectations for their information to be placed in the public domain without their consent.
19. Turning first to the personal data of the MP, the Commissioner recognises that information relating to complaints against individuals carries a strong general expectation of privacy due to the likelihood that disclosure could cause the data subjects' distress and could also cause permanent damage to their future prospects and general reputation.
20. The MP in this case was a member of the council at the relevant time. The report in this case was an inquiry into the alleged sexual misconduct of the MP and the issue was whether or not he was in breach of one or more of the provisions of the Code of Conduct which then governed his behaviour as an elected member. In his guidance on personal data<sup>3</sup>, the Commissioner states that the expectations of an individual will be influenced by the distinction between his or her public and private life and this means that it is more likely to be fair to release information that relates to the professional life of the individual. However, information relating to an internal investigation or disciplinary hearing will carry a strong general expectation of privacy. This was recognised by the Information Tribunal in the case of *Rob Waugh v Information Commissioner and Doncaster College*<sup>4</sup> when it said at paragraph 40 that:

"...there is a recognised expectation that the internal disciplinary matters of an individual will be private. Even among senior members of

---

3

[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf)

<sup>4</sup> EA/2008/0038, 29 December 2008

staff there would still be a high expectation of privacy between an employee and his employer in respect of disciplinary matters.”

21. The Commissioner acknowledges that the complaint relates to an allegation which could adversely affect the MP's ability to conduct his job, his future career and general reputation. Having seen the withheld information, he also acknowledges that it contains information of a professional as well as a personal nature. However, this does not detract from the general expectation of privacy that is held in relation to information concerning the investigation of complaints against individuals.
22. Although the Commissioner considers that the withheld information in this case relates to the MP's professional life as well as his private life, he is satisfied that the individual would still have a reasonable expectation of confidentiality and privacy in relation to the withheld information.
23. Turning now to the personal data of the alleged victim and her family, given the candid content of the information, and the fact that some of it is sensitive personal data, the Commissioner is satisfied that there would have been a strong expectation of confidentiality and privacy in this case.

### **Consequences of disclosure**

24. In order to assess the impact of the consequence of disclosure on whether disclosure would be fair, it is necessary to consider whether disclosure of the information would cause unwarranted damage or distress to the data subjects.
25. In this case, the Commissioner considers that disclosure of the report under the FOIA would be likely to lead to renewed media interest in the issue.
26. In relation to the MP, the Commissioner considers that disclosure of information relating to an allegation of sexual impropriety, which is not yet proven in Court, would be an intrusion of privacy, could cause distress, and could also cause permanent damage to the MP's future prospects and general reputation.
27. In relation to the alleged victim and her family, the Commissioner considers that the potential renewed media interest could be very distressing to the individuals' and could impact on their wellbeing. Even without any media interest, the Commissioner considers that disclosure would cause distress due to the nature of the information, the

expectations of privacy and the fact that the alleged victim is described as a vulnerable adult.

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

28. The Commissioner accepts that in considering 'legitimate interests', such interests can include broad general principles of accountability and transparency for its own sake along with specific interests which in this case is the legitimate interest in knowing how an allegation of sexual misconduct has been investigated and the outcome of that investigation.
29. The complainant has stated that there is a serious cover up in progress by the council about sexual assaults by an MP on a vulnerable constituent and provided links to newspaper articles as evidence of this<sup>5</sup>. He said that it seems that despite a QC's findings, 'the council would prefer to protect this sexual predator, rather than the general public from him, which is their clear duty'. He said that it is a matter of public protection and safety.
30. It is clear to the Commissioner that there is a strong public interest in the public of Portsmouth in understanding the allegations and the findings of an independent legal expert on whether they are substantiated. Mr Hancock plays an important public role in the city council, in terms of influence and responsibility, as well as representing constituents. He also plays a role representing the constituents of Portsmouth at Westminster. There is a public interest in the public assessing, for themselves, whether they have confidence in Mr Hancock as their representative. There is also further public interest in the report as it was paid for with public money.
31. However, the Commissioner would not accept that the public interest is as strong as the complainant suggests and there isn't a compelling public interest to protect the public, in terms of any imminent risk. The Commissioner also notes that the report has been passed to the Police.
32. The complainant also said that he would be happy for the alleged victim's details to be redacted as he understands how the DPA should apply to the victim but not the MP who he described as a 'notorious

---

<sup>5</sup> <http://www.portsmouth.co.uk/news/local/mike-hancock-decision-is-delayed-1-5684977>

<http://www.portsmouth.co.uk/news/local/frustration-after-hancock-probe-is-put-on-backburner-1-5686731>

public figure'. However, the complainant also said that the council cannot protect the anonymity of the victim because the council published her name as a victim on its own website. At the time of writing, the Commissioner was unable to find a reference to the victim on the council's website.

33. The council said that it considered whether the requested information could be anonymised to prevent the individuals being identified but with reference to the code of practice on anonymisation issued by the Commissioner, 'taking account of all the means likely reasonably to be used', even if the names were removed, they could still be identified.
34. The Commissioner has also considered the extent to which the report could be anonymised but due to the wording of the request, the unique nature of the issue and the media interest, he does not consider that redaction would be possible in this case.
35. The Commissioner notes that the withheld report has been handed to the police, which indicates that there are other ways to meet the legitimate public interest in terms of maintaining public confidence in the city council's process. Also, the fact that the report was likely to have been under consideration by the Police at the time of the request, does it make more likely that disclosure is unfair, as any formal investigation process is not yet complete.
36. The Commissioner considers it is clear that it is outside the reasonable expectations of the individuals that their personal data, and in some instances, sensitive personal data, would be disclosed. The sensitive personal data, by its very nature, is information that individuals regard as the most private information about themselves and disclosure of this type of information, which was not in the public domain, is likely to have a detrimental or distressing effect on the data subjects. He considers that the reasonable expectations of the data subjects, although differing for the Mr Hancock and the alleged victims, are not outweighed by any legitimate public interest in disclosure, and accepts that disclosure of the personal data in this case would be unfair. The Commissioner therefore considers that the exemption at section 40(2), by way of section 40(3)(a)(i), is engaged and that the council was correct to withhold the requested information.
37. As the Commissioner has decided that the disclosure of this information would be unfair, and therefore in breach of the first principle of the DPA, he has not gone on to consider whether there is a Schedule 2 condition, or in the case of sensitive personal data, a Schedule 3 condition, for processing the information in question.



## Right of appeal

---

38. 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)

39. 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.
40. 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 .....**

**Steve Wood**  
**Head of Policy Delivery**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**