



IN THE FIRST-TIER TRIBUNAL **Case No. EA/2011/0131 & 0137**
GENERAL REGULATORY CHAMBER INFORMATION RIGHTS
ON APPEAL FROM:

Information Commissioner's Decision Notice No: FS50359348

Dated: 7th June 2011

BETWEEN

MR GREENWOOD

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

and

BOLTON METROPOLITAN BOROUGH COUNCIL

Second Respondent

AND BETWEEN

BOLTON METROPOLITAN BOROUGH COUNCIL

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

And

MR GREENWOOD

Second Respondent

Heard at 45 Bedford Square on 21st and 22nd November 2011 with additional written submissions thereafter

Representation: Mr Greenwood represented himself,

The Commissioner: Mr Gerry Facenna

Bolton Borough Council: Mr Timothy Pitt Payne QC

Date of decision 17th February 2012

BEFORE:

Fiona Henderson (Judge)

Michael Hake

And

Marion Saunders

Subject matter: FOIA – s 40 data protection

Cases: Corporate Officer of the House of Commons [2008] EWHC 1084

**Corporate Officer of the House of Commons v IC and Norman Baker MP
EA/2006/0015 and 16**

**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER**

Case No. EA/2011/0131 & 0137

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal refuses appeal 0131 and allows appeal 0137 in part and amends the Decision Notice FS50359348 dated 7th June 2011 as follows for the reasons set out in main body of the Decision.

SUBSTITUTED DECISION NOTICE

Dated: 17th February 2012
Public authority: **Bolton Metropolitan Borough Council**
Address of Public Authority: **Town Hall, Civic Centre, Bolton, Lancashire BL1 1RU**
Name of Complainant: **Mr John Greenwood.**

The Substituted Decision:

1. For the reasons set out in the Tribunal's determination, the Commissioner's decision notice is upheld save that in relation to the information recorded in columns 4-8 and 10 of the register relating to those of Principal Officer Grade, we find that s 40(2) FOIA is engaged because disclosure would breach the first data protection principle as disclosure would not be fair and lawful and condition 6 of Schedule 2 FOIA is not fulfilled as the rights, freedoms and legitimate interests of the data subjects outweigh the legitimate interests of the public.

Action Required:

2. Within 35 days, the Council are required to disclose the names, department and section (columns 1-3) of all those appearing on the register and to disclose the information in columns 4-8 and 10 of the register insofar as it relates to Chief Officers subject to the exceptions which are set out in the confidential schedule.

Signed

Fiona Henderson

(Judge)

REASONS FOR DECISION

The request for information

1. On 13th October 2010 Mr Greenwood asked for copies of all declarations of interest for all current Bolton Councillors¹. On the same date he also asked:

“Please supply copies of any similar declarations held by the council for all/any senior council officers”.

The Council withheld this information relying upon s 40 FOIA (personal data).

2. Following a complaint by Mr Greenwood, the Commissioner issued a Decision Notice **FS50359348** in which he found that all the information was personal data but that (with the exception of a few individual redactions²):

- Names,
- Department,
- Section,
- Name and address (and in some categories details of the nature/quantity of work) of any additional business or other employment (including partnerships, consultancy, directorships, retainers and share holdings.)³

should be disclosed, as disclosure would not breach the Data Protection Principles because disclosure would not be unfair and Schedule 2 condition 6 would be satisfied.

The appeal to the Tribunal

3. 9 staff gave their consent for the information identified by the Commissioner to be disclosed. Both Mr Greenwood and the Council have appealed the Decision Notice in relation to the remainder of the requested information.

i. The Council appeals (EA/2011/0137) on the grounds that:

- a) Disclosure would be unfair to Officers and additional 3rd parties whose personal data is contained within the withheld information.

¹ These were supplied on 12th November 2011

² See paragraph 53 of the Decision Notice

³ The complete list is set out in paragraph 57 of the Decision Notice and is found in columns 4-8 and 10 of the register.

- b) Schedule 2 condition 6 is not satisfied as disclosure is unwarranted and outweighs any legitimate interests of 3rd parties.
 - ii. Disclosure would breach the second data protection principle, as disclosure under FOIA is inconsistent with the purposes for which it was obtained.

- 4. Mr Greenwood (EA/2011/0131) largely accepts the Commissioner's findings, but argues that the Commissioner failed to give proper consideration to the fact that some associations or membership of organisations (in particular but not limited to Common Purpose and the Freemasons) often have an element of business activity either in part or entirely. He argues that disclosure of information in relation to this type of organization would not breach the data protection principles.

- 5. The Tribunal does not consider that Mr Greenwood has defined a sufficiently identifiable category and has therefore considered all the information (except interests in property within the Borough) withheld by the Commissioner, in relation to this aspect of the appeal. This is because any social activity provides an opportunity to network. It is not uncommon for people to prefer to do business with someone whom they know in another context, as familiarity, friendship and prior dealing come into play. Mr Greenwood initially sought to distinguish e.g. membership of the Freemasons from membership of a Golf club on the basis that playing golf was entirely recreational. The Tribunal rejects that contention and is satisfied that golf clubs do not routinely publish lists of their members and membership of a golf club would also provide business development opportunities and indeed is often used specifically for that purpose. As he alleges in relation to Freemasonry, there is no transparency as to the parties who are acquainted in this way. The Tribunal is satisfied that having attended the same educational establishment (which would not necessarily appear on the register), attending the same place of worship or sharing a hobby are all activities which might lead to conflicts of interest from official dealings with or decisions in respect of individuals who share an officer's private interests. Consequently the Tribunal is satisfied that it is right to construe any activity appearing upon the register as one which has the potential to create relationships which might lead to bias, conflict or preference in the way that an Officer conducts themselves on Council business.

Preliminary Matters:

6. Mr Greenwood explained that he was aware from the response to an earlier FOIA request that many thousands of pounds had been spent on Council members attending “Common Purpose” training seminars and he was concerned that this would provide a hidden networking opportunity which at present remained undisclosed and which might be used to the advantage of those Officers or other attendees.

7. The Council provided confirmation that within the withheld material there were no references to Common Purpose. Mr Eastwood, the Council’s Monitoring Officer indicated that, as with the Councillor’s register which included no references to Common Purpose, he would not expect seminars attended by Officers and paid for by the Council to be included on the register of outside interests. The Council provided this clarification in order to bring focus to the oral hearing and also to enable Mr Greenwood to be assured that there was no conflict in the panel hearing the case (one of the panel members had provided a training seminar for Common Purpose in 2008).⁴

8. The Council made no indication as to whether there was any reference to Freemasonry within the closed material because unlike Common Purpose, if applicable, the Council would expect it to appear on the register because:
 - There was a declaration in relation to this on the disclosed Councillors’ list.
 - This was an outside interest.

Confirming or denying therefore had the potential to provide personal data in this or future requests.

The s10 DPA statements

9. Following the Commissioner’s Decision Notice the Council contacted all those who had made entries upon the register asking whether they consented for their information to be disclosed. 9 consented, some did not respond and 28 provided s10 DPA statements indicating that disclosure would cause them distress. These s10 statements were relied upon in support of the contention that disclosure would be unwarranted. The Council did not rely upon s40(3)(a)(ii) FOIA (which creates a specific exemption where disclosure

⁴ Mr Greenwood had made an application for that panel member to recuse themselves which he withdrew upon receiving confirmation that there was no reference to common purpose within the closed material.

would breach DPA section 10), since no section 10 notices had been served prior to the Commissioner's Decision Notice. The Council's email to the data subjects containing the s10 pro forma invited the individuals to consent or object at its start and despite parts of the letter seeming to imply that failure to object would result in disclosure, the terms of the letter were not sufficiently unequivocal that the Tribunal is satisfied that a failure to reply constitutes consent.

10. The s10 statements were served on Mr Greenwood with the following matters having been redacted:

- staff names
- any information that may identify that member of staff's interest on the register or post⁵.
- information that concerns a third party or reveals details about the individual's private life⁶.

The Tribunal has reviewed the redacted material and is satisfied that it is properly withheld for the purposes of the hearing for the reasons set out by the Council.

11. The Tribunal has taken into consideration all the written, oral and documentary evidence before it, parts of which are summarized below and referred to in the analysis of the issues. Mr Eastwood who is the monitoring Officer for the Council with responsibility for checking the register to ensure that no Code or legislation is contravened gave evidence as to the way that the register is compiled and maintained.

12. He explained that there is no requirement for the Council to collate a register of interests for senior Council officers. However, Bolton Borough Council do so on a voluntary basis. The Council's constitution⁷ provides that:

All employees on [Salary Band 8]⁸ and above along with certain other [specified] posts must complete the form attached [...]. If they have any personal interests or involvement which might conflict with their employment or the interests of the Council.

⁵ i.e the redacted information

⁶ Council's letters to the Commissioner and Mr Greenwood dated 25th October 2011.

⁷ Constitution 7.3

Consequently it is mandatory for those with an applicable interest to register.

13. The number of employees at Salary Band 8⁹ and above amounted to approximately 1000 people at the relevant time. The Tribunal has been furnished with the actual number who had made a return under the scheme which amounts to between 5-10 % of those within the relevant grades.
14. In his written statement Mr Eastwood stated that there was no need to disclose the information to provide a check to ensure that the disclosure had been honestly and fully completed by officers, as:
- he already bore that role and took his duties very seriously
 - additionally Officers are made aware via the Code of Conduct that any breach of the Code could result in disciplinary proceedings¹⁰.
15. However, in oral evidence he was realistic and did not overstate what he was able to do. He acknowledged that his role as Monitoring Officer was by necessity reactive, as maintaining the register only forms a small part of his duties. In practice he will look at the register to check if something is drawn to his attention and note any changes approximately monthly. Scrutiny is not at individual entry level. He does not verify the accuracy of the information or check it (or the names of employees who have not made an entry) at Companies House or the Land Registry. He emails an annual reminder to all those of the appropriate grade to keep it up to date. He does not chase those who fail to file a return. No one has ever been disciplined for failure to complete the register when they ought to have done.
16. Mr Eastwood accepted the system was flawed in that it was likely that 100s of those who ought to be on the register had not made declarations (based on the likely proportion of those Council employees who live in the borough who should declare an interest on that basis alone as having an interest in a property in the Borough).

⁸ The Council underwent a re-grading in 2008-9. Although there were changes of titles there was no change to the level of person required to make an entry on the register.

⁹ Who equate to Principal Officer grade 8

¹⁰ 14.1 Any contravention of this Code of Conduct could result (or be taken into account) in disciplinary proceedings.

Section 40 FOIA

17. There is no dispute that the disputed information contains personal data and that as such s40 FOIA applies. Under s40(3) FOIA disclosure to the public *otherwise than under this Act* must not contravene any of the data protection principles. Pursuant to the first data protection principle:

Personal data shall be processed fairly and lawfully...

18. Guidance is given as to what is meant by “fairly” in paragraph 1(1) of Part II of Schedule I and “regard is to be had to the method by which they are obtained, including in particular whether any person from whom they are obtained is deceived or misled as to the purpose or purposes for which they are to be processed.”

Analysis and Submissions

19. The Council relies upon the Council constitution which provides:

7.4 “The Monitoring Officer will maintain a register of declared interests. The register will be accessible only to the Monitoring Officer and other authorised Officers for the purposes of ensuring that proper standards of conduct are maintained (and/or in accordance with paragraph 14.2 below¹¹). Individual employees will only have access to information recorded in respect of themselves, if requested”.

20. They argue that consequently none of the Council Officers would have an expectation that the information would be disclosed to the world at large and that consequently any disclosure is unfair. They also argue that “*otherwise than under this Act*” means that the Tribunal cannot take into consideration disclosure under FOIA in its assessment of the expectations of the Officers. The Tribunal accepts that the terms of s40(3) prevent a public authority from circumventing the provisions of the DPA. However, the Tribunal does consider that the existence of FOIA and the climate of transparency encapsulated in the Nolan reforms, the trend towards publication of senior government salaries and awareness of the 10 Standards in public life are material in assessing the reasonable

¹¹ 14.2 Should there be a need to undertake an investigation into an employee's standard of behaviour it will be necessary to examine the Registers, (attached at Appendix 'B' and 'C'), and any evidence obtained from these sources may, together with any other information, be used to assist with the investigation

expectation of an Officer even in the context of a statement purporting to limit the dissemination of personal data.

21. Additionally the Council sought to rely upon the *Hull City Council decision notice FS50073305* as authority that there would be no expectation of disclosure under FOIA for this information. The Tribunal was not assisted by this decision notice which dates from 2006. It does not set a precedent was based on its own facts and public understanding of FOIA and practice has evolved since then.
22. The Tribunal notes that s40 does not rest entirely upon the data subject's expectation but also includes considerations of fairness. The Tribunal notes that it would be wrong for the Council to prevent disclosure of personal data under FOIA by "contracting out" of any expectation of disclosure where that is unreasonable¹².
23. The Commissioner and Mr Greenwood argue that for the purposes of fair processing the officers were relatively senior and decision makers within the Council, senior officers should understand that the information they provide in their declaration of interest is for the purposes of allowing proper scrutiny of their decision making and to ensure the integrity of the Council's decision making as a whole. They would have an expectation that they would need to carry out their tasks transparently and be accountable for the decisions they took. There is a strong need for clarity on the personal interest of senior officers for this reason.
24. Mr Greenwood argues that the Council have identified the grades that they consider to have decision making power and that having identified officers sufficiently senior to merit inclusion on the register the Tribunal should not go behind that assessment. Equally he argues that even if there is a line manager above some of the more junior grades, these principal officers still have enormous influence as they can slant a recommendation to a decision maker and often recommendations are accepted at face value. Grade 8 is halfway up the Grade structure of those below CO grade and their salary is above the national average.

¹² Corporate Officer of the House of Commons [2008] EWHC 1084

25. The Tribunal notes that the grades identified by the Council as eligible for routine inclusion on the register start at Principal Officer Grade 8 which equates to a salary band starting at over £27,000 and continues on through the rest of the Principal Officer Grades to include all the Chief Officer Grades up to Chief executive. The Tribunal notes that Central government defines “senior” when setting the level for salary disclosure in local government as corresponding to those classified as chief executives and chief officers – second tier or above – under the Joint Negotiating Committee (JNC). The threshold salary band used by central government in this context is £58,200 and above. The principal Officers salary banding falls below that threshold and the Chief Officers banding falls within that category. Using these definitions those principal Officers included upon the register at grades below Chief Officer grade would not constitute Senior¹³.
26. The Tribunal does not dispute the Council’s assessment of where it is appropriate to draw the line in terms of who is included on the register to enable them to ensure that their own officers are not conflicted. However, the Tribunal considers that seniority is material to the expectation of Officers and is satisfied that there is less of an expectation for disclosure of personal data in the interests of transparency for the more junior grades. Both in terms of consistency of application (e.g. they would have no expectation of their salary being disclosed) and also because there are checks and balances above them in terms of line managers with decision making power. Additionally the Tribunal is satisfied that the type of information recorded will affect the expectation of the Officers. The more it relates to work or professional life the less expectation that it would remain private. However, there would be a greater expectation of privacy relating to information which but for the potential for conflict with Council business, is wholly independent of an Officer’s role at the Council.
27. Whilst section 40 FOIA is an absolute exemption and there is no public interest test under the Act, the assessment of fairness and the application of the data protection principles does involve striking a balance between the reasonable expectation of the data subject with general principles of accountability and transparency.¹⁴

¹³ In assessing the seniority of Officers the Tribunal had regard to the salary bandings and job descriptions and was satisfied that they were consistent with the grading structure.

¹⁴ The Corporate Office of the House of Commons v IC and Norman Baker MP EA/2006/0015 and 16

28. The first data protection principle requires one of the conditions in Schedule 2 DPA to be met before disclosure can be made. Condition 6 provides;

(1)The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

Necessary implies the existence of a “pressing social need” rather than something useful or desirable.¹⁵

29. The Tribunal accepts that the following legitimate interests apply and that these meet the “necessary” test:

- a) senior officers should not be in a position where they can affect matters on which they have a personal interest.
- b) There is a public interest in allowing the public access to this type of information in order to promote public confidence and scrutiny of decision making.
- c) The public has a legitimate interest in being able to access such information.
- d) There is a need for clarity on the personal interest of senior officers for this reason.
- e) Disclosure would provide a check on whether Officers had made proper disclosure.
- f) Disclosure would increase trust in decisions taken by Officers.

30. The Council argued that disclosure would reduce the detail and frankness of Officer disclosures. The Tribunal disagrees with the Commissioner’s finding (para 48 DN) that any “chilling effect” is not relevant to the consideration of schedule 2 paragraph 6. The *legitimate interests* of the public have been identified as including greater transparency, public accountability and faith in fair decision making. Any matter that would hinder the advancement of these aims would impact upon whether disclosure was therefore necessary for the purposes of these legitimate aims, and would alter the balance of whether any prejudice to the rights and freedoms and legitimate interests of the data subjects was in fact warranted. However, the Tribunal did not accept that there would in fact be any “chilling effect” because of the “auditor effect” namely, disclosure would

¹⁵ Corporate Officer of the House of Commons [2008] EWHC 1084

enable the public to scrutinize the information and challenge any inaccuracies or omissions, and this was likely to add impetus to frankness in declaration.

31. The Council argues that disclosure is unwarranted and unnecessary because there are already sufficient checks and balances to achieve the aims identified above.
- a) The Council can consult the register before a decision is made.
 - b) If conflicts arise during a Council meeting, any declaration is recorded via the minutes of the meeting which is publicly available.¹⁶
 - c) Employees are bound by the employee code of conduct which is part of the constitution.
 - d) The Monitoring officer has the role of ensuring that declarations of interest are properly completed.
 - e) A failure to do so would lead to serious disciplinary consequences against the Senior Officer concerned.
 - f) Disclosure would not increase public trust which is sufficiently maintained by the fact that the Council is known to operate a system requiring declaration of interests from Senior Officers.
32. However, as set out at paragraphs 14-16 above, the Tribunal considers that this system is flawed and accepts that the lack of public transparency is a relative weakness within the system of monitoring. The Tribunal accepts that disclosure of the information would enable the public to check whether conflicts had been registered and approach the monitoring officer on that basis.¹⁷ The Tribunal accepts that some of the public concerns could be met more proportionally through improvements to the system of administration rather than blanket disclosure of the personal data, such as requiring every eligible officer to make a nil return if they had no applicable interests to prevent failure to declare by omission. Additionally disclosure of the names alone of those who had made a declaration would provide some additional information which would further transparency even if the category or detail of the declaration remained withheld. For example if a member of the public believed that an officer was conflicted and that officer was not

¹⁶ Constitution 7.6

¹⁷ Whilst it was Mr Eastwood's evidence that no one had ever approached him on the basis before and the Councillors' list has been disclosed, the Tribunal notes that the Councillors' list was disclosed to Mr Greenwood but not placed on the website. There is no evidence that it has been widely disseminated.

listed as having made any entry upon the register, they may have reasonable grounds for believing an officer may not have declared it and be able to raise the matter..

33. However disclosure of some of the information would be likely to cause substantial distress and would be extremely intrusive into the private lives of the Officers. Mr Greenwood has indicated that he is not seeking home addresses and for this reason he has not challenged the redactions relating to having an interest in a property in the borough. However, home addresses may on occasion be derived from other information such as company addresses. Whilst the Courts have considered in the past whether a home address is really private information e.g. MPs are required to disclose an address when seeking nomination, the Tribunal reminds itself that Officers are not elected officials, and whilst their address may be in the public domain e.g. on an electoral roll, publication of the address in this context is confirming the link between the address and the Council employee (rather than just a name which might be the same as a Council employee).
34. The Tribunal is satisfied that disclosure of home addresses of Council Officers is unfair and unwarranted because from the open parts of the s10 statements it is clear that many Officers would feel vulnerable, threatened and exposed if this information were to be made public. The Council makes unpopular decisions at times and Officers may be targeted by those who disagree. The public are able to raise matters with specific employees through their work contact details, but they have the right to prevent their employment intruding into their private time and life.
35. The disputed information includes, affiliations and relationships that could be misused misrepresented or used to locate and identify where individuals are at certain times. Mr Greenwood disputed that membership of an organization would necessarily enable an individual to be located. Whilst this is true of a national organization such as the RSPCA¹⁸ there is a different consideration if the organization is more local such as a branch of the Rotary Club which might publicize the time and dates of its meetings or have a regular meeting place. Additionally the Tribunal considers that the information is sufficiently detailed that it would enable a portrait to be built up of someone for lobbying, or marketing purposes and that this would be very intrusive.

¹⁸ The Tribunal uses examples from the disclosed Councillors' list by way of illustration.

36. Additionally Mr Greenwood argued that there would be no additional impact upon any person already identified by the Commissioner if memberships of organizations and associations were also to be disclosed. The Tribunal disagrees. The difference between knowing how and in what capacity an individual spends the rest of their working time is very different from knowing where they live, and what they do in their spare time away from their working life.
37. Taking the above factors into consideration the Tribunal is satisfied that no fair processing information was provided to any 3rd parties identified in the disputed information and that they would have no expectation that their personal information would be disclosed as a result of the entry by another on the register. A family member who runs a business may not wish to publicize that they are related to a member of the Council, as it may impact on their business negatively. Disclosure of their personal data would be unfair and unlawful and breach the first data protection principles in these circumstances.
38. It would be fair to disclose Names, departments, sections and job titles of those who have made entries on the register. This relates to their professional life in the public service. The names etc. are likely to be publicly available in any event (from Council letters, signatories to letters, Council meetings or reports). The additional information discernable from disclosure in this context is that the individuals have made an entry on the register. The Tribunal considered whether disclosure in this context would be unfair as they would be “exposed” in a way that colleagues who had failed to make an entry would not. The Tribunal was satisfied that the numbers involved were not so small (being between 50 and 100) that there was any likelihood of any individual standing out. Additionally the Tribunal is here considering disclosure of the fact of an entry on the register not which category the entry related to. To use the register of Councillors by way of example this may just mean that the employee is a member of the RSPB and no additional inference can be drawn from this disclosure alone.

39. The Tribunal is satisfied that disclosure of other information relating to the principal officer grades would be unfair. They would have had no expectation that this would be made public in light of the restricted access referred to in the constitution and their expectation was reasonable in light of their level of seniority and the lines drawn by central government in relation to other disclosures. Additionally the level of intrusion (see paragraphs 35-6 above) would be unwarranted in light of the level of responsibility and the corresponding existing checks and balances of line managers, and internal monitoring.

40. Even in relation to the “professional” elements upon the register such as other work done, consultancies held etc., the Tribunal is satisfied that it would constitute a substantial intrusion into their private life. It may impact on their home address, their income, location when not at the Council and members of their family. The Tribunal is satisfied disclosure is unwarranted because unlike the register as a whole, additional work undertaken by employees is monitored on an individual level as Officers require written permission from a Director¹⁹ to undertake other work. Ordinarily (but not inevitably) their line manager would know of the additional employment. Whilst Officers have to “self certify” on the register if they undertake additional work, and it is not a requirement that the monitoring officer is notified that permission has been given by the Director concerned, in practice the Tribunal accepts that it is likely that the monitoring officer’s advice would be sought before permission were granted. The legitimate concerns of the public can be addressed more proportionately through improving the internal systems for monitoring.

41. In relation to Chief Officers, the Tribunal is satisfied for the reasons set out above that in light of their seniority and their understanding of the need for transparency and accountability, it was not reasonable for them to rely upon the terms set out in the Constitution. Disclosure of the “professional” elements of the register would be fair and is not unwarranted. The more senior an Officer the greater the need for transparency and confidence in public office as they have the responsibility for decision making. The

¹⁹ Or the chief executive in the case of a Director

“professional” elements are less private in that they relate to working life and the public have a legitimate interest in being able to assess whether a senior officer is distracted by his commitments to e.g. other employers or an additional income stream.

42. The Tribunal has made some redactions (as set out in the confidential schedule) from the Chief Officer “professional” disclosure. This is because disclosure would either reveal a home address or 3rd party data, and it is being withheld for the reasons set out above. The Tribunal is satisfied that disclosure of which Chief Officers have had redactions made in columns 4-8 and 10 should be disclosed since this will not itself reveal the personal data or the home address and (unlike in relation to column 9) this level of disclosure would not indicate whether the home address is within the Borough or not.
43. The Tribunal is satisfied that different considerations apply to the memberships and associations of the Chief Officers. Whilst the legitimate interest in ensuring transparency and probity is stronger in relation to these individuals, the extent and detail of the declarations constitutes very private information which but for a potential for conflict with Council business is wholly unrelated to their employment at the Council. Mr Greenwood relies upon the details relating to Politicians in the public domain as support for his contention that disclosure should be made. Mandatory disclosure of e.g. interests, is a consequence of putting themselves up for election. The public are being asked to assess whether to vote for them and require the information for those purposes. The Tribunal observes that additional information comes into the public domain through self promotion in that the politicians are seeking to appeal to the public through shared common ground. The Tribunal takes the factors at paragraphs 35 and 36 above into consideration in reaching the conclusion that disclosure would not be fair and lawful and condition 6 of Schedule 2 FOIA is not fulfilled as the rights, freedoms and legitimate interests of the data subjects outweigh the legitimate interests of the public.

Sensitive Personal Data

44. From the disclosure of the Councillors’ register of interests it is apparent that this includes sensitive personal data relating to Political beliefs, Trades Union membership and religious belief. By extrapolation the Tribunal asked for submissions from the parties to allow for the possibility that the withheld material might also contained sensitive personal

data. The Tribunal allowed both parties additional time to address that issue by way of written submissions.

45. Mr Greenwood argues that e.g. membership of a Mosque²⁰ is different from following Islam and that consequently membership of a Mosque would not constitute sensitive personal data. This is because a Mosque may also undertake social and political initiatives and in this context the information is cultural and indicative of involvement within a particular section of the community. The Tribunal is satisfied that membership of any religious congregation is indicative of a religious belief in addition to any social/cultural or Political activities which may also be involved.

46. Although Mr Greenwood made no explicit reference to schedule 3 of the Data Protection Act 1998 in his submissions, the Tribunal recognizes that he is a litigant in person and adopts a purposive approach. He argues for the legitimate interest that the public has in ensuring that Council business is conducted fairly and with transparency. The Tribunal has considered whether this fulfils any of the schedule 3 criteria and at its highest it is arguable that he relies upon:

*3 The processing is necessary—
(b) in order to protect the vital interests of another person, in a case where consent by or on behalf of the data subject has been unreasonably withheld.*

The Tribunal is satisfied that the legitimate interests of the public as outlined above, do not constitute a vital interest within the terms of the DPA and that consequently no Schedule 3 condition is fulfilled. Any sensitive personal data which may be included within the withheld material would not be disclosed for these reasons.

The second data protection principle

47. Pursuant to the second data protection principle:

Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.

²⁰ The Tribunal having used membership of a Mosque in the Councillors' register by way of illustration during legal argument.

The Council argue that the data was collected for the operation of a register of declared interests accessible only to a small number of authorised Council officers²¹. Public disclosure of that information would constitute further processing incompatible with the purposes for which it was obtained and would therefore breach the second data protection principle.

48. From paragraph 7.4 of the Constitution the following purpose is identified as being:

“for the purposes of ensuring that proper standards of conduct are maintained”.

The Tribunal is satisfied that the data were gathered in order to ensure probity in public office and disclosure under FOIA would further the same purpose. Defining those who would have access to the data, does not constitute defining the purpose of the scheme, but the way that the scheme was intended to be managed by the Council.

Other Matters

49. The Tribunal notes that the way that information has been disclosed by the Council pursuant to the Decision Notice in relation to those individuals who consented, identified under which categories of still withheld information the individuals had made a declaration. The Tribunal considers that this has disclosed some personal information which ought to have remained withheld in particular in relation to interests in property. The Tribunal is satisfied that this would have been avoided had a global redaction of each column been applied e.g. “any information relating to these individuals which appears in columns 9-13 remains redacted pursuant to the Commissioner’s decision”.

Conclusion

50. For the reasons set out above, the Tribunal allows the Council’s appeal in part (insofar as it relates to the professional interests of Officers below Chief Officer level) and refuses Mr Greenwood’s appeal. The Tribunal directs that the names department and section of those on the register be disclosed along with the information listed in cells 4-8 and 10 insofar as it relates to Chief Officers but subject to the redactions relating to 3rd party personal data and home addresses set out in confidential schedule 1.

²¹ Emphasis added

51. The Tribunal's decision is unanimous.

[Signed on original]

Fiona Henderson

Judge

Dated this 17th day of February 2012