

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 August 2013

Public Authority: Widdrington Village Parish Council
Address: C/O Joiner's Cottage
Widdrington Village
Northumberland
NE61 5EA

Decision (including any steps ordered)

1. The complainant has requested information about the expenses of the Parish Council Clerk (the "Clerk"). Widdrington Village Parish Council ("the Council") provided some information to the complainant, it withheld some information under section 40(2) of the Freedom of Information Act 2000 (FOIA) and it confirmed that some of the information requested was not held.
2. The Commissioner's decision is that the Council has now provided all information held which falls within the scope of the request apart from the information withheld under section 40(2) FOIA. The Commissioner considers that section 40(2) FOIA was incorrectly applied to part 5 of the request but was correctly applied to part 9 of the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - The Council should disclose the information requested at part 5 of the request.
4. The public authority must take these steps within 35 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 6 July 2012 the complainant requested information of the following description:

"I require the following information under THE FREEDOM OF INFORMATION ACT 2000.

Reference financial year 2011/2012 Clerk's hours and expenses.

1. How many hours did the Clerk work each month.
2. Has it been necessary for the Clerk to work more than 12 hours in anyone month.
3. What expenses did the Clerk receive each month.
4. What general amenities during work time does the Clerk provide.
5. How much travel expenses did the Clerk receive each month and for what purpose.
6. What is the mileage rate that the Clerk is paid.
7. What equipment does the Clerk use.
8. Who proposed and seconded the motion in 5(b) minutes March 24th 2011.
9. What was the actual proposal that was put forward."

6. On 22 July 2012 the Council responded. It provided a response in relation to parts 1, 2, 4, 6, 7 and 8 of the request. In relation to part 3 of the request, it said that the complainant already had this information. In relation to part 5 and 9 of the request it said that this was not available under FOIA as it was agreed in a confidential session.

7. The complainant requested an internal review on 3 August 2012 in relation to parts 3, 4, 5, 7, 8 and 9 of the request. The Council sent the outcome of its internal review on 10 November 2012. In relation to part 3 of the request it provided the complainant with the monthly figure and said that this was contained in the financial summary. In relation to part 4 of the request it said it did not hold this information. In relation to part 5 of the request, it said this information was exempt under section 40(2) FOIA. In relation to part 7 of the request it said it did not hold this information. In relation to part 8 of the request it again said it did not hold this information and confirmed that there was no legal requirement that proposer and seconder are recorded in the minutes, particularly when the proposal is unanimously agreed. In relation to part 9 of the request it said that the proposal was to award the Clerk expenses. The details of which were discussed in a confidential session because they related to the Clerk's personal information. It confirmed that this detailed information was exempt under section 40(2) FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 30 November 2012 to complain about the way his request for information had been handled.
9. The Commissioner has considered whether the Council is correct when it says that it does not hold any further information in relation to parts 3, 4, 7 and 8 of the request. The Commissioner has also considered whether the Council was correct to apply section 40(2) FOIA to withhold the information requested at parts 5 and 9 of the request.

Reasons for decision

Parts 3, 4, 7 and 8 of the request

10. Section 1(1)(a) of FOIA states that, "Any person making a request for information to a public authority is entitled – to be informed in writing by the public authority whether it holds information of the description specified in the request". In this case the Council has stated that at the time of the request it did not hold any further information, other than that which was provided to the complainant.
11. The Council has explained that in order to collect relevant information to respond to the requests, both hard copy documents and documents saved on the Clerk's personal computer were searched. The Council confirmed that there was no further information held other than that which had been provided to the complainant in relation to parts 3 and 8 of the request. In relation to part 4 of the request it confirmed that no information was held and in relation to part 7 of the request it again confirmed that no information is held as the Clerk used their own personal equipment. Finally the Council explained that the Clerk is not expected to store information on their personal computer and the Council only retains information which it is legally obliged to keep in hard copy.
12. Based upon the submissions of the Council, the Commissioner is satisfied that on the balance of probabilities, no further information is held relevant to parts 3, 4, 7 and 8 of the request.

Parts 5 and 9 of the request

13. The Council has withheld the amount of travel expenses paid to the Clerk and what these were for. Whilst it has disclosed what the proposal was it has not disclosed the detail of the proposal, again as the details related to the personal circumstances of the Clerk relevant to the issue

of paying expenses. It said that this information was the personal data of the Clerk and was exempt from disclosure under section 40(2) FOIA.

14. Section 40(2) FOIA provides an exemption for information that constitutes the personal data of third parties:

"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."

10. Section 40(3)(a)(i) FOIA states 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, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress),"

11. The Commissioner has first therefore considered whether the information redacted under section 40(2) is the personal data of one or more third parties.

12. Personal data is defined in section 1(1) of the Data Protection Act (DPA) as:

"data which relate to a living individual who can be identified –

(i) from those data, or

(ii) 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 intention of the data controller or any other person in respect of the individual."

13. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform

decisions affecting them, has them as its main focus or impacts on them in any way.

14. The withheld information relates to travel expenses paid to the Clerk and why and details of a proposal which related to the Clerk's expenses. The Commissioner is satisfied that this is information the Clerk would be identifiable from. He does therefore consider the withheld information would be the Clerk's personal data.
15. Personal data is exempt if either of the conditions set out in sections 40(3) and 40(4) of FOIA are met. The relevant condition in this case is at section 40(3)(a)(i) of FOIA, where disclosure would breach any of the data protection principles. In this case the Commissioner has considered whether disclosure of the personal data would breach the first data protection principle, which states that "Personal data shall be processed fairly and lawfully". Furthermore at least one of the conditions in Schedule 2 should be met.

Likely expectation of the data subject

15. In this case the Commissioner considers that the data subject would have had a reasonable expectation that the travel expenses paid to carry out the role of Parish Council Clerk and why would be disclosed into the public domain. This is because the amount of monthly non-travel expenses was disclosed by the Council and furthermore the journeys taken were a part of the Clerk's role within the Parish Council.
16. The Commissioner does not however consider that the data subject would have expected specific personal details, contained within the proposal relating to the issue of paying the Clerk expenses, to be disclosed into the public domain. Whilst the Commissioner accepts that the Clerk would have expected the fact that expenses are paid, the amount of travel and non-travel expenses and roughly what this is paid for to be disclosed, he does not consider that the Clerk would expect their personal circumstances to be disclosed into the public domain.

Legitimate public interest

17. The Commissioner considers that there is a legitimate public interest in knowing how much was paid to the Clerk in travel expenses. The expenses are paid out of public funds to an officer of the Parish Council carrying out the role of Parish Council Clerk. The Commissioner does not therefore consider that it would be unfair to disclose the amount of travel expenses paid, given the conclusions set out at paragraph 15 above.
18. The Commissioner also considers that there is a legitimate public interest in understanding why expenses are paid and ensuring that this is done fairly from public funds. In this case the Council has confirmed

that the proposal was to pay the Clerk expenses, it has confirmed how many hours the Clerk works per week and how much is paid in non-travel expenses per month for using the Clerk's own home for Council work as it does not have its own premises. The Commissioner therefore considers that the Council has gone some way to meet this legitimate public interest. He considers therefore that it would be unfair to disclose any further detail about the Clerk's personal circumstances that were relevant to the proposal.

Right of appeal

19. 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: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

20. 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.
21. 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

Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
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SK9 5AF