

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 February 2018

Public Authority: Northallerton Town Council

Address: High Street
Town Hall Buildings
Town Hall
Northallerton
North Yorkshire
DL7 8QR

Decision (including any steps ordered)

1. The complainant has requested information relating to the council's finances and the costs of the former chief executive leaving her role at the council. The council claimed the exemptions in section 21 (information available by other means), section 41 (information provided in confidence), and section 40(2) (third party personal data). During the Commissioner's investigation it withdrew its reliance upon section 41 but continued to rely upon section 40(5)(b)(i) to withhold some information. It also withdrew its reliance upon section 21.
2. The Commissioner's decision is that Northallerton Town Council has correctly applied section 40(2) to the information falling within parts 1, 2 of the request. It has also correctly applied section 40(5)(b)(i) to part 5 of the request. The council was also correct to apply section 40(2) to part 3 of the request however the Commissioner has decided that the council should disclose a salary band of £5000 within which the salary of the former chief executive of the council fell.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To disclose to the complainant a £5000 band, within which the salary of the former chief executive of the council fell.

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 19 June 2017, the complainant wrote to the council and requested information in the following terms:

"I would be grateful if the town council would provide the following:

- 1) All payments made to [name redacted]](or her representative), the ex Chief Executive/Clerk to Northallerton Town Council, when she left the employment of the Council, including payments for her legal costs. (Please identify when she left the council)*
- 2) The reason for each payment, eg redundancy, compensation, legal costs etc.*
- 3) Her salary at the time of leaving*
- 4) The annual revenue budget of Northallerton Town Council for the financial year that she left.*
- 5) The legal and any associated costs (eg external investigations) incurred by the Town Council in relation to this matter.*

Please let me know if you need to clarify any of the above and I would be grateful if you would acknowledge receipt."

6. The council responded on 5 July 2017. It refused to provide the information for parts 1-3 of the request on the grounds that it was exempt under section 40(2) (personal data). It applied section 21 (information available by other means) to part 4 of the request, saying that the council's accounts are published on the council website. It also said that part 5 of the request could not be responded due to the need to preserve confidentiality (section 41).
7. The council wrote to the complainant and said that it does not have the formal processes to enable it to carry out an internal review of its decision. It therefore suggested that the complainant make a complaint direct to the Information Commissioner.

Scope of the case

8. The complainant contacted the Commissioner on 7 July 2017 to complain about the way his request for information had been handled.
9. During the course of the Commissioner's investigation the council reconsidered its position and withdrew its reliance upon section 41 for part 5 of the request. It said however that it could neither confirm nor deny whether it does hold information falling within the scope of the request and applied section 40(5)(b)(i).
10. Additionally during the course of the Commissioner's investigation the Commissioner identified that the council had misconstrued part 4 of the request. The council therefore disclosed the information falling within the scope of part 4 to the complainant on 26 January 2018. The Commissioner has not therefore considered the application of section 21 further, other than in respect of the delay which occurred before the correct information was provided to the complainant. She has therefore considered this in respect of section 10(1) below.
11. The Commissioner considers that the complaint is whether the council is able to apply the exemption in section 40(2) to withhold the information. She has also considered the council's reliance upon section 40(5)(b)(i) to neither confirm nor deny whether information is held in respect of part 5 of the request. She has not considered the application of section 21 and section 41 as the council's reliance upon these exemptions was withdrawn.

Reasons for decision

Section 40(2)

12. The council also applied section 40(2) to withhold the information. Section 40 states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the legislation would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').
13. In order to rely on the 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."*

14. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA.

Is the information personal data

- 15. The Commissioner has firstly considered whether the information is personal data as defined in the DPA.
- 16. Parts 1- 3 of the request relate to payments made to the former chief executive/clerk of the council following her leaving her role at the council. The Commissioner therefore considers that as information relating to an identifiable individual the requested information is personal data.
- 17. Parts 5 of the request relates more generally to expenses of the council. It requests the legal costs associated with 'this matter'. The Commissioner understands by this that the complainant is requesting the amount of any legal costs associated with the Chief Executive leaving her employment with the council.
- 18. This part of the request relates specifically to whether legal action was necessary in the chief executive leaving the council. If the council were to provide details of a cost figure in response to this part of the request it would provide an indication of the legal input (if any) which was required by the council when the former chief executive left her role. A disclosure of any information held falling within the scope of this request might, for instance, indicate whether her leaving her role was voluntary or compulsory, or whether she left in agreement or in dispute with the council. The council therefore applied section 40(5)(b)(i) to neither confirm nor deny whether it held information in relation to this part of the request.
- 19. The Commissioner considers that if information is held in relation to this part of the request it would be personal data for the purposes of section 40(5)(b)(i).
- 20. In conclusion therefore the Commissioner is satisfied that parts 1 to 3, and part 5 of the request relate to personal data belonging to the former chief executive of the council.

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

21. The council considers that the disclosure of the information requested within parts 1-3 of the request would contravene the first data protection principle.

22. *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."

23. 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

Parts 1 & 2 of the request

25. The Commissioner recognises that people have an instinctive expectation that a public authority, in its role as a responsible employer and data controller, will not disclose certain information. She considers that information relating to the reasons why an employee has ended their employment at a public authority will attract a strong general expectation of privacy as it is inherently personal to the data subject.

26. This expectation of privacy was affirmed in the Tribunal case of *Trago Mills (South Devon) Limited v Information Commissioner and Teignbridge District Council (Appeal number EA/2012/0028)*. The Tribunal upheld the Commissioner's decision that disclosure of the details of a severance agreement would be unfair and thus contravene the first data protection principle. The Tribunal said that:

"Even without an express confidentiality provision, an individual would have a reasonable expectation that the terms on which his employment came to an end would be treated as confidential."

27. Taking the above into consideration, the Commissioner considers that the former chief executive would have had a reasonable expectation that information on why she left her role, and the level of any payments she received as a result of this would not be disclosed.
28. That being said, the request was not for the reasons why the former chief executive left her role. It was simply for the figures, the financial costs to the council, of her leaving her position at the council.
29. The Commissioner also notes that there has been increasing transparency required from public authorities where large payments are made to staff leaving their role at public authorities. In some cases, where larger payments are made, authorities are required to provide a specific record of this within their annual accounts.
30. Nevertheless, in this case, due to the size of the council and the overall levels of salaries involved, the Commissioner considers that it would not be expected that any payments made as a result of her leaving her position would be disclosed as a matter of course.

Part 3 of the request

31. As regards part 3 of the request the Commissioner has previously issued guidance on the disclosure of salary details of public authority employees: 'Requests for personal data about public authority employees' which is available at https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf
32. Effectively the details of the salaries of public authority employees is becoming more transparent, with many authorities now disclosing details of the salaries of their most senior staff. The Commissioner has therefore considered how the effect of this greater transparency may have affected the expectations of the former chief executive in this case.
33. The council firstly points out that although the position was entitled chief executive (and the former chief executive was therefore the most senior position within the council), the authority is not large and her former position cannot therefore be equated with the position of a chief executive in a county council or even a district council. The annual budget which the council has reflects the smaller nature of this authority. The council therefore argued that taking this into consideration, although the nature of the role was as chief executive there would be far less legitimate expectation that specific salary levels would be disclosed.

34. The Commissioner notes this point, and the council has provided details of the chief executives salary to her in order for her to consider this issue in light of the above arguments.
35. The Commissioner has taken into account the fact that the former chief executive left her role in 2015. The costs associated with her salary are not therefore current expenses which the council pays its current chief executive. This point works both for and against the expectations of the individual however. She would have less of an expectation that her former salary might be disclosed a number of years after she left the council, however the distress caused by such a disclosure is also likely to be less because of this.

The consequences of disclosure

36. The council argues that the terms under which any person leaves their employment is an issue which is inextricably linked to an individual's personal life and any such disclosure may cause harm and distress to the individual concerned.
37. The Commissioner considers that disclosure would amount to an infringement into the privacy of the individual which has the potential to cause damage and distress.

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

Parts 1 & 2 of the request

38. In considering 'legitimate interests in disclosure', such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.
39. The Commissioner recognises that there is a legitimate public interest in the expenditure of public money, especially in a climate of considerable public sector cuts. The council has not disclosed the reasons for the former chief executive leaving her post and has not clarified to the public any costs to the council (and therefore, loss of public money) associated with her doing so. The council is not a large public authority. It is a town council with limited funds. Any significant costs to it which arose from this would have an impact upon the services it provides and the functions it carries out.
40. The complainant has not specifically asked for the reasons why the former chief executive left her role at the council. However in asking for details of the costs of this to the council this may provide a significant indication as to whether her leaving her role was amicable or not. In

either case it would be a significant intrusion into her private life and could cause distress.

41. As both the Commissioner and the Tribunal have made clear in the Trago Mills case previously cited, the legitimate interests of the public in knowing the circumstances of a person leaving their employment must be weighed against the individual's right to privacy. The Tribunal made clear that such decisions should be made on the expectations of privacy held by 'the reasonably balanced and resilient individual'. The Tribunal concluded that:

"We do not find that the Council's duty to be transparent and accountable about the expenditure of public money outweighs the requirement to respect the former employee's reasonable expectation of privacy. Accordingly, we conclude that disclosure would have breached the data protection principles."

Part 3 of the request

42. The legitimate interests of the public in the disclosure of this information is lessened as it is not currently an expense paid specifically to the former chief executive at the current time. Payments will be made to a different chief executive, and these do not form part of the requested information. However the public still has a legitimate interest in knowing how much the former chief executive was paid during the time she was employed by the council.
43. As the former chief executive no longer works for the council, and has not done so for a number years, the loss of privacy of would be lessened as it would not provide any current information on any salary she may be receiving in any employment she has taken up since that role. Nevertheless the Commissioner has taken into account that a disclosure on her former salary would still be likely to impact on her privacy to some degree.

Conclusion on the analysis of fairness

Parts 1 & 2 of the request

44. The Commissioner has published guidance on requests for personal data about public authority employees at https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf. In that guidance, she recognises that it is reasonable to expect that a public authority would disclose more information relating to senior employees than more junior ones, but that it is always necessary to consider the nature of the information and the responsibilities of the employees in question.

45. The Commissioner recognises that people generally have an expectation that a public authority, in its role as a responsible data controller, will not disclose certain information, such as personnel matters, and that it will respect their confidentiality. The Commissioner accepts that personnel matters are generally dealt with in confidence regardless of the seniority of the data subject.
46. The request does not specifically ask for details as to why the chief executive left her role. It also does not ask if her leaving the role was voluntary or compulsory. The terms of the request are limited to the costs to the council of her leaving her role, together with information on the overall budget of the council. The request is seeking information on how her leaving her role may have impacted upon the council financially. This would give an indication as to whether that might affect how the council is able to carry out its functions and provide its services to the community it serves, particularly as it is not a large public authority. This has been reduced somewhat by the time which has passed since the chief executive left her role and any associated costs were incurred. The Commissioner recognises however that the public has a clear legitimate interest in having that information made available to it.
47. However this needs to be balanced against the cost of disclosure to the individual, to her loss of privacy over inherently private matters, and to any personal distress such a disclosure might bring. The question for the Commissioner is whether a disclosure of the information in meeting the legitimate interest of the public requires an unwarranted degree of intrusion into the private life of the former chief executive.
48. The council argued that it recognised that the public had a legitimate interest in knowing the expenditure of the council in terms of its personnel matters... *"The published annual accounts of the Town Council detail the amount of expenditure collectively incurred on its employees. The public can access the overall expense."* It argued however that providing this information lessens the legitimate interest of the public in knowing the specific details requested by the complainant in this case.
49. Taking all of the above into account, the Commissioner concludes that it would be unfair to the data subject concerned to disclose the requested information. Disclosure would not have been within the data subject's reasonable expectations and the loss of privacy could cause unwarranted distress. She acknowledges that there is a legitimate interest in the expenditure of public money but does not consider that this outweighs the data subjects strong expectations of, and rights to, privacy. As the council has stated, information on the overall costs of personnel matters is published, and the legitimate interests of the public

in that information being disclosed has reduced due to the time which has passed since the former chief executive left her employment at the council.

50. 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, she has not gone on to consider whether there is a Schedule 2 condition for processing the information in question.
51. The Commissioner has therefore decided that the council was entitled to withhold the information under section 40(2), by way of section 40(3)(a)(i).

Part 3 of the request

52. The Commissioner considers that there are no strong arguments for a disclosure of the former chief executive's exact salary. She no longer works for the council, and there is no strong legitimate interest in that information being disclosed a number of years after she left the council. She has also taken into account that although she was the senior officer in the authority, as a small authority her role did not equate to that of a chief executive in a district or a county council.
53. The Commissioner's guidance on the disclosure of exact salary information states at paragraph 51:

"Exceptional circumstances are needed to justify the disclosure of exact salaries when they are not routinely published. In such cases there may be additional public interest factors that outweigh any detriment to the individuals concerned. These exceptional circumstances could include situations where:

- *there are current controversies or credible allegations;*
- *there is a lack of safeguards against corruption;*
- *normal procedures have not been followed;*
- *the individual in question is paid significantly more than the usual salary for their post; or*
- *the individual or individuals concerned have significant control over setting their own or others' salaries."*

54. The Commissioner notes that there was some degree of media coverage on an issue relating to the chief executive prior to her leaving her role, but she has not noted any evidence which would suggest any likelihood of an occurrence which would justify a disclosure of the former chief executive's specific salary.

55. Nevertheless the public does have a legitimate interest in having access to broad figures regarding the salary which was paid to her. As a small authority with a limited budget a disclosure of a salary band within which the former chief executive was paid would provide some details of the level of pay senior management received for the work that they carried out during her time at the council.
56. The Commissioner's decision is therefore that the council should disclose a salary band of £5000 within which the former chief executive's salary fell prior to her leaving her role in response to the request.

Section 40(5)(b)(i)

57. Section 40(5)(b)(i) provides that:

(5) The duty to confirm or deny—

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either—

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

58. The council's argument is that any confirmation or denial that information is held in response to the request would in itself fail to comply with the data protection principles. It argues that if it either confirms or denies whether any information is held this would provide personal data in relation to the chief executive due to the nature of the information requested
59. The Commissioner has considered the application of this exemption to the information, bearing in mind her decision that the council was correct to apply section 40(2) to the other parts of the request.
60. A disclosure of any information held would indicate whether there was legal work required when the chief executive left her role. Although it would not be absolutely clear, if, for instance, the council confirmed that no legal costs were incurred it would suggest that the former chief executive left the council under amicable terms. Contrary to this, a

confirmation that information is held on legal costs would suggest that there may have been a degree of dispute, or negotiations over her leaving her position. Neither of these would be a certainty however without specific details as to the reasons behind the costs involved being disclosed. This information was not requested by the complainant.

61. The complainant is requesting information specifically relating to the chief executive's reason for leaving her employment, such as any information on any legal dispute, or the costs of any investigation or litigation preparation or costs involved with her leaving her role. The initial question for the Commissioner in respect of this exemption is whether confirming or denying that any information is held would in itself breach the data protection principles. Any confirmation or denial that information is held could in itself provide a clear indication as to whether the terms of her leaving her position were amicable or not.
62. The Commissioner therefore considers that the council was correct to apply Section 40(5)(b)(i) to withhold the information.

Section 21

63. Section 21 provides that *"Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information."*
64. The council argued that section 21 was applicable to part 4 of the request as it considered that that information was already available to the complainant through its published accounts on its website. The Commissioner has confirmed that information on the council's public accounts is available at <http://northallertontowncouncil.gov.uk/> from 2013 to 2017 and each set of accounts includes a specific section on employee costs.
65. However the Commissioner noted that the request was for the 'annual revenue budget' for the council in the year of the matter concerned. An annual revenue budget is a different set of figures to the overall annual income/expenditure and balance report provided in the annual accounts following the end of the financial year. The annual revenue budget is likely to be produced at the beginning of the financial year, will provide a forecasted income and will set budgets for council services for the forthcoming year based upon the forecasted income and available capital. The figures budgeted for each department or for the council as a whole may subsequently be amended on a weekly or monthly basis reflecting any changes to the forecasted income/expenditure to manage the spending to meet the overall budget for the remaining part of the year.

66. The Commissioner therefore contacted the council on 18 December 2017 and asked whether it holds an annual revenue budget for the relevant year. The council responded on 16 January 2017. It confirmed that it holds a copy of the Annual Revenue Budget for the relevant year and provided a copy to the Commissioner. It also confirmed that it had no objections to that information being disclosed to the complainant and did so on 26 January 2018.
67. As such the Commissioner has not found it necessary to consider the application of section 21 further to this information, other than to consider the application of section 10(1) regarding the delay in this information being disclosed to the complainant below.

Section 10(1)

68. Section 10(1) of the Act provides that:

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

69. The complainant made his request for information on 19 June 2017. The council did not disclose the information falling within part 4 of the request until 26 January 2018 as it had initially misconstrued the information being requested by the complainant.
70. The Commissioner has therefore decided that the council did not comply with the requirements of section 10(1) as regards its response to part 4 of the request for information.

Right of appeal

71. 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

72. 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.

73. 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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