

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 20 September 2006

Public Authority: Hull City Council
Address: The Guildhall
Alfred Gelder Street
Kingston upon Hull
HU1 2AA

Summary

The complainant asked whether a Council's senior legal officer had declared her private business interests as required by the Council's code of conduct. The Council confirmed that the officer had done so at all times. The complainant also asked for documentary proof. The Council withheld several documents on the grounds that they contained personal information, that they had been provided in confidence and that their release was prohibited by statute. The Commissioner decided that the documentation and the information they contained was exempt from disclosure.

The Commissioner's Role

1. The Commissioner's role is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

The Request

2. On 28 March 2005 the complainant requested the following information from Hull City Council:
3. *'Did the monitoring officer and chief legal officer of the council, Margaret Taylor, register all her private business interests as was required by the council's code of conduct? Please provide details of when and how these interests were registered including documentation to show these interests were registered.'*
4. The Council answered the complainant's request on 7 April 2005 with confirmation that the chief legal officer had completed a full declaration of interests as required by its Code of Conduct on her appointment as Town Clerk

and Monitoring Officer in December 2003. The Council also explained how and in what format these interests were registered. It added that the officer's business interests were publicly available through Companies House.

5. The complainant then requested confirmation that the officer had registered her interests prior to December 2003. The complainant was advised that prior to implementation of the Council's Code of Conduct in December 2003, declarations of interest were governed by a voluntary national code. The Council informed the complainant that the officer had registered her interests as required by the Council at all times.
6. The complainant asked the Council to provide him with documentary proof that she had registered her interests both pre and post December 2003. On 15 April 2005 the Council informed the complainant that documentation containing council officers' declarations of interest was exempt from disclosure under section 40 (personal data), section 41 (information provided in confidence) and section 44 (statutory prohibition) of the Act.
7. On 28 April 2005 the complainant contacted the Commissioner, saying that he wished to formally challenge the Council's non-disclosure of the information.
8. At this point no internal review of the Council's response had been conducted. The Commissioner subsequently advised the complainant that he needed to exhaust the Council's internal complaints procedure before the complaint could be considered under section 50 of the Act. Accordingly, on 22 August 2005 the complainant asked the Council to review its decision to withhold the documentation. On 7 November 2005 the Council upheld its original decision to withhold the documentation, citing the same exemptions as before.
9. In order to ascertain whether the exemptions under sections 40, 41 and 44 were appropriately applied, the Commissioner asked the Council on 17 May 2006 to provide him with a copy of the documentation that was withheld. He also asked for copies of the Council's Code of Conduct for Employees and the preceding National Code of Conduct.

The Investigation

Scope of the case

10. The complainant asked the Commissioner to consider the following points in relation to the Council's withholding of the requested information:
- (a) 'Registration is a vital tool of ensuring probity in government and if a senior officer in particular has a list of private directorships in businesses which include a ships' chandlers in a port city it is essential this is recorded.*
- (b) The District Auditor has previously drawn to public attention his concern that Hull City Council was failing to record officer interests adequately.*
- (c) In each case, the information provided cannot possibly fall into any of the (exemptions relied upon by the Council). The primary reason for this is that all Mrs Taylor's business interests are publicly recorded at Companies House. In that case, the information is already disclosed in a public context...*
- (d) If the information is publicly available, it is a matter of some concern that Hull City Council will not openly state whether, when and how the information was registered with them prior to December 2003. I should point out the company directorships stretched back well into the 1990s.'*

Findings of fact

11. The Local Government and Housing Act 1989 made provision for the appointment of Monitoring Officers and placed a duty on Councils to designate one of their officers for this role. Many local authorities choose to designate their Chief Legal Officer as their Monitoring Officer. The 1989 Act sets out the role of Monitoring Officers. Under this provision the officer is required to report to the Council if any proposal, decision or omission by the Council, its committees or officers is believed by the Monitoring Officer to contravene any legislation or code of practice.
12. Hull City Council did not have a Code of Conduct for Employees prior to December 2003. Prior to that date, declarations of interest were only requested by the Council when an individual was appointed. There was no specific requirement to update that declaration.
13. The Council's Code of Conduct for Employees was implemented in December 2003. The Code contains a declaration of interests form which all officers are required to complete whenever circumstances dictate a financial or non-financial interest. The completed declaration form is placed in the officer's personal file and in the Council's departmental and central registers. The registers are considered by the Council to be an extension of an officer's personal file.

14. The Council's view is that an officer's declaration of interests is not a public document and is therefore not open to inspection. The Council's Code of Conduct states that information about officers held by the Council will not be released except where written authority to disclose such information has been given by the officer. Access to an individual's declaration of interests is limited within the Council to the officer themselves, Chief Executive, Monitoring Officer, Chief Financial Officer, Corporate Director and Head of Service.

Analysis

15. The Commissioner has considered the Council's response to the complainant's request for information.

Procedural Breach

16. Section 17(5) of the Act provides that a refusal notice must, "*contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure.*" It must also contain, "*particulars of the right conferred by section 50*" (i.e. to make a complaint to the Information Commissioner).
17. The notice issued by the Council on 15 April 2005 failed to provide details of the Council's internal review procedure or details of the complainant's rights of appeal to the Commissioner. To that extent the Commissioner finds that the public authority failed to comply with the requirements of the Act.

Exemptions

18. The complainant requested documentary proof from the Council that the officer had registered her private interests. However, it is clear from section 1 of the Act that whilst the legislation provides entitlement to the communication of information, there is no entitlement for provision of a document. Accordingly, the Commissioner is satisfied that the Council has no obligation to provide copies of documentation to the complainant.
19. The Commissioner examined the completed declaration of interests forms in order to ascertain the appropriateness of the exemptions that were applied by the Council to withhold the information.

Section 40 (personal data)

20. The Council relied upon section 40 of the Act to withhold the requested information. This states that:

40. - (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) 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.*

(3) 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), and*
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.*

(4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

21. The relevant part of the section is section 40(2). It is engaged by virtue of satisfying the condition at section 40(3)(a)(i). To disclose the information would contravene the first data protection principle which states that, 'Personal data shall be processed fairly and lawfully.'
22. Section 40 is an absolute exemption and as such is not subject to the public interest test.
23. In essence, the complainant requested confirmation from the Council that the officer had complied with all obligations to declare her outside interests. The Commissioner is satisfied that such confirmation was provided by the Council when it informed the complainant that the officer had registered her interests as required at all times. The Council confirmed this in its letter of 7 November 2005 to the complainant which reiterated the Chief Executive's statement that the officer had always complied with all statutory requirements and Council policies regarding declarations of interest.
24. The Commissioner considered the question of whether a person in a senior position in the Council should expect that private interests will be made public. Personal information is exempt from disclosure under the Act if disclosure would lead to a breach of the data protection principles. This exemption is intended to

ensure that greater public openness does not compromise personal privacy. Whilst there is an obligation for local authorities to maintain a public register of declared interests in respect of elected members there is no obligation to maintain a public register in respect of employees. The Commissioner has ascertained that in Hull, the condition under which employees have agreed to declare their private interests is that this information will remain confidential. This condition of confidentiality applies to the private interests of senior as well as other officers. The Commissioner is therefore satisfied that any subsequent disclosure in this case would lead to a breach of the first data protection principle on the grounds that such disclosure would be unfair to the individual employee. In the Commissioner's view, the information is therefore exempt under section 40.

25. The complainant had argued that details of the officer's business directorships registered with the Council cannot be exempt from disclosure because such information is already in the public domain. His argument rests on the fact that the Companies Act 1985 (as amended) requires details of directorships to be registered at Companies House. However, the complainant's request concerned registration of interests with the Council. The information available at Companies House does not indicate whether the officer registered her interests with the Council and therefore the Commissioner does not consider the information to be in the public domain on the basis of this argument.
26. The complainant had also maintained that even if the information was exempt, names of companies could be redacted thus allowing for the release of blank forms containing only the officer's name and dates of her declarations. However, the declaration of interest forms also provide for the recording of private interests and personal data apart from the information accessible at Companies House. Part of that personal data includes the officer's name and the officer's dates of signing.
27. The provision of forms with details of interests redacted would still breach the officer's confidentiality as it would provide information as to how many declarations had been made and whether her interests had changed over time. The officer had not been informed that the forms would be disclosed and it would be unfair to disclose these in any format.

Section 41 (information provided in confidence)

28. The Council relied upon section 41 which states that:

41. - (1) Information is exempt information if-

- (a) it was obtained by the public authority from any other person (including another public authority), and*
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.*

29. Section 41 is absolute and therefore not subject to the public interest test.
30. In common law, the public interest may override a breach of confidence if the greater public interest lies in the disclosure of the information. In this context the Commissioner has considered the complainant's comment concerning the need for probity in government. The Commissioner has not been advised of any lack of probity on the part of the officer concerned and therefore concludes that there is no evidence to suggest that the greater public interest lies in disclosure.
31. The Commissioner has also noted that although the complainant cites a Council audit of 2004 which referred to weaknesses in the Council's systems prior to December 2003, the auditor clearly stated that he did not find any evidence of wrong doing by any officer.
32. The Commissioner has studied the Council's Code of Conduct for Employees and the Code's related Guidance Notes. The Guidance Notes state that the declaration of interests form is specifically for use within the Council. The form itself states that it will be held as part of the individual's personal file. The Commissioner has also considered the Council's several statements within the Code concerning the necessary maintenance of confidentiality and the need to exercise care to prevent unauthorised transmission of such records.
33. The stated terms under which employees of the Council agree to declare their private interests are that such information will be kept securely and will remain confidential. The Commissioner is satisfied that disclosure of this information would give rise to an actionable breach of confidence against the Council.

Section 44 (statutory prohibition)

34. The Council relied on section 44 of the Act stating that the requested disclosure is prohibited under the Human Rights Act 1998.
35. The protection afforded to personal data under section 40 is consistent with the right to private life under the Human Rights Act and the European Convention from which it is derived. As the Commissioner has concluded that the requested information is exempt by virtue of section 40 he has not considered the application of section 44 in this Decision Notice.

The Decision

36. The Commissioner's decision is that with regard to its withholding of exempt information, Hull City Council dealt with the request in accordance with the Act. However, the Council failed to deal correctly with the Act's requirement to include particulars of complaint procedures in its refusal notice.
37. The Commissioner requires no steps to be taken.

Right of Appeal

38. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 20th day of September 2006

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**