

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 16 May 2007

Public Authority: Calderdale Council
Address: Town Hall
Halifax
HX1 1UJ

Summary

The complainant requested information concerning the grounds and financial arrangements for the early retirement of a senior member of staff of the public authority. The public authority refused this request under section 40(2). The Commissioner finds that disclosure of personal data relating to the former employee of the public authority would breach the first data protection principle and, therefore, that section 40(2) has been applied correctly.

The Commissioner's Role

1. The Commissioner's duty 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 7 February 2005, the complainant requested the following information:

"A couple of years ago a director retired from Calderdale Council, a [name redacted]

I wish to know:

the grounds of retirement

the final salary

any lump sum payment in addition

all other financial and other details in relation to the severance package"

3. The public authority responded to this request on 9 March 2005. In this response the public authority stated that the information requested would not be provided as it was considered exempt under section 40. The public authority justified the

- citing of this exemption by stating that the complainant had requested information relating to a specific person (the “third party”).
4. The complainant responded to this on 13 March 2005 and asked that the public authority carry out an internal review of its handling of his information request. The public authority responded initially on 14 March 2005, stating that the request for an internal review would be passed to the Chief Executive.
 5. The public authority responded, giving the findings of the internal review, on 6 April 2005. The outcome of the review was that the decision to withhold the information as exempt under section 40 was upheld and gave detail as to the exemption provided by section 40 that was believed to apply to the information requested.
 6. The public authority specified subsections 40(3)(a)(i) and 40(3)(b) as being the exemptions that were considered to apply and stated that it believed the first data protection principle would be breached through disclosure of the information requested by the complainant. This was because the public authority did not believe that any of the conditions for processing provided by Schedule 2 of the Data Protection Act 1998 (the “DPA”) would be fulfilled through disclosure of the third party’s personal data in response to the complainant’s information request.
 7. The public authority also stated that it believed that the sixth data protection principle would be breached through disclosure of the third party’s personal data as the public authority had received what it considered to be a notice valid for the purposes of section 10 of the DPA requiring the public authority to not disclose his personal data to the complainant. Section 10 of the DPA provides a right to issue to any data controller a notice requiring that the data controller cease, or not begin, processing personal data in a way that would cause substantial and unwarranted damage and distress. The public authority further clarified that the exemption applied was absolute and was not subject to the public interest, as the complainant had suggested in his letter in which he requested an internal review.

The Investigation

Scope of the case

8. The complainant contacted the Commissioner initially on 9 May 2005. In this letter, the complainant specified that he wished to complain about the withholding of the information requested.

Chronology

9. The Commissioner contacted the public authority on 1 June 2006. In this letter, the public authority was informed of the complaint and was asked to provide representations as to why the exemption provided by section 40 was considered to apply. The public authority was also asked to supply to the Commissioner copies of the information withheld from the complainant.
10. The public authority responded on 12 June 2006. The public authority provided

- information concerning the background to the complainant's information request, stating that it arose from a situation where a senior staff member of the public authority had retired early in April 2003.
11. The public authority provided some further information concerning why it believed the exemption provided by section 40 applied here. It was confirmed that the information withheld was considered to be personal data relating to the individual who had left the employment of the public authority in April 2003. The public authority also stated that the third party had expressed a strong preference that his personal data not be disclosed to the complainant, or in any other circumstance. The public authority did not provide copies of the withheld information with this response.
 12. The Commissioner contacted the public authority again on 21 June 2006. In this letter, the Commissioner stressed the importance of the information withheld from the complainant being provided to his office and asked again that the public authority supply this information.
 13. The public authority responded to this on 27 June 2006. With this response, the public authority provided the information that it stated fell within the scope of the complainant's information request.
 14. The Commissioner replied on 31 July 2006. In this letter, the Commissioner asked for further clarification from the public authority as to why it was considered that the first data protection principle would be breached through the disclosure of the requested information. In particular, it was stressed to the public authority that it should consider whether the disclosure of the information requested here would be fair.
 15. The Commissioner also noted that the public authority had previously referred to section 40(3)(a)(ii). In connection with this, the Commissioner asked the public authority to clarify whether it had received a notice from the third party asking that, in accordance with section 10 of the DPA, it not disclose his personal data to the complainant as this processing of his personal data would be likely to cause substantial and unwarranted damage or distress.
 16. The public authority responded to this on 23 August 2006. In this response, the public authority further clarified its stance in regard to the first data protection principle. The public authority stated that, as the third party had left the employment of the public authority prior to the Act coming into force, he had not been informed of the possibility of his personal data being disclosed in response to a request made under the Act.
 17. The public authority also confirmed that it had received what was considered to be a notice valid for the purposes of section 10 of the DPA and provided a copy of this notice to the Commissioner. This notice was in the form of a letter sent by the third party to the public authority in which the third party confirmed that he did not wish for his personal data to be disclosed to the complainant.
 18. The Commissioner contacted the public authority for further information on 4 April 2007. In this letter, the public authority was asked, firstly, to confirm that the information supplied to the Commissioner on 27 June 2006 was considered all

the information held by the public authority relevant to the scope of the complainant's information request.

19. Secondly, the Commissioner noted that the information withheld from the complainant referred to a press release concerning the departure of the third party from the public authority. The Commissioner asked the public authority to confirm if a press release had been issued. If it had, the public authority was asked to supply a copy of this to the Commissioner, or, if this was not possible, to summarise the contents of the press release.
20. The public authority responded to this on 13 April 2007. In this response, the public authority stated that the information supplied to the Commissioner on 27 June 2006 was all the information held by the public authority that fell within the scope of the information request.
21. The public authority confirmed that a press release concerning the departure of the third party from the public authority had been issued. The public authority enclosed a copy of this press release and also advised that this was available on its website. This press release announced the retirement of the third party and stated that the third party would be leaving to undergo an operation. This press release did not go into further detail about the nature of the third party's departure from the public authority.
22. The Commissioner contacted the public authority further on 18 April 2007 by telephone to ask whether there were any circumstances where the salary details of directors, or other senior staff, within the public authority would be made available. The public authority confirmed that some information about the amounts paid to the highest earners within the public authority would be released.
23. The public authority went on to explain that it is required to disclose the number of employees earning in excess of £50,000 a year. The public authority provided an extract from its 2002-03 statement of accounts which included a schedule showing the number of earners above £50,000 a year, grouped in bands of £10,000; £50,000 - £59,999 etc.

Findings of fact

24. Information falling within the scope of the complainant's request is held by the public authority; this information has been withheld under section 40.
25. The complainant contacted the public authority by letter dated 15 June 2006 stating that he did not wish his personal data disclosed to the complainant.
26. A press release concerning the departure of the third party from the employment of the public authority was issued, but this press release did not include details of the circumstances or financial details of the third party's departure from the public authority.

Analysis

Section 40

Section 40 (3) (a) (ii)

27. The public authority's arguments have focused on sections 40(3)(a)(i) and (ii). Turning to the issues regarding 40(3)(a)(ii) firstly, the public authority cites this subsection as it believes that the complainant has issued a notice valid for the purposes of section 10 of the DPA.
28. The Commissioner does not agree that the complainant has issued a notice valid for the purposes of section 10 of the DPA. The document that the public authority has referred to as this notice, the third party's letter of 15 June 2006, appears to be in response to the public authority informing the third party that an information request for his personal data had been made. The Commissioner agrees with the approach of the public authority in seeking the views of the third party about the potential disclosure of his personal data and the views of the third party are considered further later in this notice.
29. However, it is clear to the Commissioner that the third party was writing specifically in connection with the issue of the information request and it was not his intention to issue a notice under section 10 of the DPA. The Commissioner also notes that the public authority has not stated if it responded to this notice within 21 days stating whether it intended to comply with it, as is required by section 10(3) of the DPA.
30. As the Commissioner does not consider that the third party has issued a notice valid for the purposes of section 10 of the DPA, no consideration has been given to whether the conditions set out section 10(1) of the DPA, that the processing of personal data that the data subject objects to would be likely to result in substantial and unwarranted damage or distress to the data subject or another, would be fulfilled.

Section 40 (3) (a) (i)

31. The public authority has also argued that the disclosure of the requested information here would result in a breach of the data protection principles. In connection with this, the public authority has referred to section 40(3)(a)(i), which is a condition for the application of section 40(2). The Commissioner has considered whether section 40(2) exempts the information requested from disclosure.
32. The public authority has argued that the processing of personal data inherent in the disclosure of the information requested by the complainant would not fulfil any of the conditions for compliance with the first data protection principle set out in Schedule 2 of the DPA. For this reason, the public authority believes that disclosure of this information would constitute a breach of the first principle.
33. The Commissioner agrees that the relevant principle here is the first principle, which requires that personal data shall be processed fairly and lawfully. The Commissioner's considerations here focus on the general issue of whether the

disclosure of the third party's personal data would be fair.

34. In the Commissioner's view, the right to access official information and the right to agree terms when an employee leaves a public authority's employment are not mutually exclusive. Where terms have been reached between a council and one of its senior employees, a balance has to be struck between a public authority's obligation to be transparent and accountable about its decisions and the expenditure of public money in a particular way and its duty to respect its employee's reasonable expectations of privacy.
35. The Commissioner has considered the nature of the information withheld and what expectations of confidentiality in respect to this information would be reasonable. An argument can be made that any information giving details of an individual's employment should be considered confidential. This is particularly the case in relation to salaries, where there is widespread expectation that this information is private.
36. However, in many cases the salary of senior staff members would be made available. This is true where, for instance, the salary of directors of a publicly listed company would be made available to share holders. It is also the case that many public sector organisations are obliged to make public the details of salaries paid to senior staff members. In addition to cases where salary details of senior staff members are already available, previous Decision Notices issued by the Commissioner have made it clear that any expectation of privacy should be lowered where it relates to senior members of staff.
37. Research conducted on this issue by the Commissioner suggests that the specific salary details of individuals at the grade at which the third party was employed at the time of his departure from the public authority is not made routinely available. As mentioned above at paragraph 23, the information routinely made available about salary does not disclose the amount earned by any individual. This, combined with the widely held and accepted expectation of privacy in relation to salary details, leads the Commissioner to conclude that the release of the third party's salary details would be unfair and, therefore, in breach of the first data protection principle. Whilst the expectations of privacy held by data subjects is not the only factor in deciding fairness, the Commissioner does not believe that the seniority of the post within the public authority previously held by the third party would outweigh this legitimate expectation of privacy.
38. As well as information about salary, the complainant also requested details of any lump sum paid to the third party and all other financial details relating to the third party's departure from the public authority.
39. The Commissioner notes and considers it relevant that the third party was an employee of the public authority and thus his salary and the cost of his departure were funded from the public purse. He acknowledges that there is a valid argument that the tax payers who supply those funds should be provided with details about how their money is spent.
40. However, the Commissioner recognises that, similarly to salary information, there would in general be a high expectation of privacy in relation to financial arrangements between employee and employer. As well as the general expectation of privacy, as mentioned previously in this notice the third party has

specifically objected to the disclosure of his personal data. This is in addition to an assurance of confidentiality given to the third party, which is covered in more detail later in this notice.

41. The Commissioner's conclusion that release of salary information would be unfair also applies to information about the financial arrangements relating to the third party's departure from the public authority. This unfair disclosure of personal data would be in breach of the first data protection principle.
42. It is apparent that the third party here was a senior staff member of the public authority. In documentation that has been made available to the Commissioner, it is clear that the third party held a senior position in terms of his responsibilities and the third party himself suggests that his role with the public authority involved maintaining a public profile.
43. In addition to information about the financial arrangements for the third party's departure from the public authority, the complainant asked for details concerning the circumstances of this. The complainant specified that he wanted details of the grounds for retirement to be disclosed.
44. The Commissioner notes that a press release stating that the third party would be leaving the employment of the public authority was issued at the time of his departure. However he understands that no information beyond the contents of the press release is in the public domain about the reasons for the third party leaving the public authority's employment.
45. The Commissioner reviewed the information withheld from the complainant in order to assess whether it would be reasonable for the third party to have an expectation that this information would remain confidential. Having reviewed this information the Commissioner is satisfied that it would be reasonable for the third party to have an expectation that material recording the grounds for his retirement would remain confidential.
46. As previously noted, the public authority sought the views of the third party about the request for personal data relating to him. In response to this, the third party made it clear that he does not wish information relating to his departure from the public authority to be disclosed in any circumstances. This response confirms that the third party has an expectation of privacy in relation to this information.
47. The third party left the employment of the public authority several years ago and the withheld information dates from that time. The Commissioner has considered whether any unfairness arising from disclosure of the complainant's personal data would be lessened as a result of the passage of time since the third party's departure.
48. Whilst this unfairness may be said to be lessened to an extent by the period of time that has elapsed, this does not outweigh the arguments in support of this processing of personal data being unfair. That a period of time had elapsed would not prevent the identification of the third party from the information withheld and would not remove the potential for distress caused by the release of this information. It is also apparent from the third party's statement objecting to the disclosure of this information that his expectation of the privacy of this information

is not reduced by the passage of time.

49. The Commissioner recognised that there may be circumstances where it would be legitimate to release information of this nature relating to a senior official at a public authority. However, whilst the third party was clearly a senior staff member within the public authority, the nature of the information withheld here would mean that it would be reasonable for the third party to have an expectation of privacy. The Commissioner does not believe that the seniority of the post within the public authority previously held by the third party would outweigh this legitimate expectation of privacy.
50. The information withheld includes a notification that the information is not for publication by virtue of Paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972. This relates to the exclusion of the press and public from any Council meeting at which the information might be considered. Access to the information can also be denied under those provisions. The relevant exemption under the Act to cite here, if the public authority sought to withhold information on the grounds of a statutory prohibition, would be section 44. However, the public authority has not cited this exemption and the Commissioner has therefore not considered whether this exemption could apply.
51. However, the Commissioner does consider this clause in the withheld information relevant, in that it would enhance the expectation of privacy and confidentiality on the part of the third party. It is also notable that this clause does not state that the 'not for publication' ruling applies for a set period of time before expiring and the Commissioner is satisfied that the third party would have had no expectation that this clause would expire after a certain period.
52. In a situation where section 40 has been applied, the Commissioner would, where possible, expect the public authority to give consideration to releasing an anonymised version of the information, with the personal data in relation to which section 40 has been applied removed. In this case, where the complainant is already aware of the identity of the individual to whom the personal data relates, this would not be effective in terms of negating section 40. Further, he also believes that because some information is in the public domain, other members of the public would be able to identify the third party with relative ease even if attempts were made to anonymise the material. For this reason, the public authority was not asked to consider releasing the information in an anonymised form.

Conclusion

53. The Commissioner concludes that disclosure of personal data relating to the third party would be unfair and would breach the first data protection principle. In forming this conclusion, the Commissioner has assessed whether the seniority of the third party's position within the public authority and the general public interest in understanding the way in which public funds are spent outweighs concerns of fairness.
54. Firstly, the Commissioner considers that emphasis must be placed on the expectations of privacy that the third party would hold. There would be a general expectation of confidentiality that any individual could be expected to hold in such

circumstances given the subject of the information withheld and the potential for detriment arising from the disclosure of this information. This expectation of privacy would be particularly strong where the information withheld contains details of financial arrangements between the third party and the public authority.

55. Secondly the Commissioner considers it important to recognise that the third party has made clear his objection to the disclosure of this information. That the third party has made his objection clear removes any question about his attitude towards disclosure and demonstrates further that he does have an expectation of confidentiality.
56. Thirdly, the Commissioner notes that the third party was given a guarantee of confidentiality at the time that his personal data was recorded. As noted earlier in this notice, whilst the public authority has not cited this directly when arguing that this information should not be disclosed, the Commissioner still considers this important in that it contributed to the expectation of confidentiality relating to the information withheld from the complainant.

The Decision

57. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act in that section 40(2) was applied correctly.

Steps Required

58. The Commissioner requires no steps to be taken.

Right of Appeal

59. 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

60. 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 16th day of May 2007

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner's Office
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SK9 5AF**