

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 26 May 2011

**Public Authority:** Oldham Council  
**Address:** Civic Centre  
West Street  
Oldham  
OL1 1UT

### Summary

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The complainant submitted a request to Oldham Council ('the Council') for information about the departure of the headmaster of Our Lady's RC High School from his position. The Council withheld this information under the exemptions at sections 40 and 41 of the Act. The Commissioner has investigated and found that the Council was correct to withhold the information under section 40(2). The Commissioner does not require any further action to be taken.

### The Commissioner's Role

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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.

### Background

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2. [Named individual] was the headteacher of Our Lady's RC High School ('the school') from 2003. [the named individual] was employed by the governing body of the school, which is a public authority in its own right. In January 2010, [the named individual] was suspended from work and in June 2010 he left his position. The Council has explained to the Commissioner that it provided HR advice to the school relating to [the named individual]'s departure.

## The Request

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3. On 29 June 2010, the complainant submitted a request to the council for the following information:
  - 1) "What are the reasons for the termination of [the named individual]'s employment at the school?
  - 2) Has he retired, resigned, been made redundant or dismissed? In the case of the latter, do you intend to inform the General Teaching Council?
  - 3) Has he or will he be receiving any monetary payment other than his pension entitlement? If so please give details."
4. On 14 July 2010 the Council responded to the complainant. The response stated that the requested information was withheld under sections 40 and 41 of the Act.
5. On 14 July 2010, the complainant wrote to the Council and asked that it comply with section 1(1)(a) by confirming if the requested information was held. The complainant also asked that the Council specify which subsections of section 40 and 41 it relied upon, and explain why the requested information was withheld under these exemptions.
6. On 27 July 2010, the Council wrote to the complainant and confirmed that it held information "in relation to employee terminations". The Council explained that it relied on section 40 because it did not believe that it could satisfy any of the conditions in schedule 2 of the Data Protection Act ('the DPA'), and disclosure of the requested information would consequently breach the first data protection principle. The Council also stated that it relied on section 41 because the requested information had been provided in confidence, and disclosure would be likely to result in an actionable breach of confidence.
7. On 27 July 2010, the complainant wrote to the Council to request an internal review of the decision to withhold the requested information.
8. On 10 August 2010, the Council provided its internal review outcome to the complainant. This upheld the previous response and confirmed that [the named individual] and the Council had signed a compromise agreement.

## The Investigation

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### Scope of the case

9. On 26 August 2010 the complainant contacted the Commissioner to complain about the Council's decision to withhold the requested information.
10. The complainant's first request was "What are the reasons for the termination of [the named individual]'s employment at the School?" The complainant has already been informed that [the named individual] left the School under mutually agreed terms set out in a compromise agreement. However, the complainant is aware that [the named individual] was suspended from his employment prior to leaving the School. The Commissioner considers that an objective reading of the request would conclude that the complainant seeks information about the circumstances of [the named individual]'s suspension.
11. The first part of the complainant's second request was "Has he retired, resigned, been made redundant or been dismissed?" The Commissioner notes that in its internal review, the Council informed the complainant that [the named individual] had departed under mutually agreed terms set out in a compromise agreement. The Commissioner therefore considers that the Council has addressed this part of the complainant's request by explaining that the circumstances of [the named individual]'s departure did not fall within any of the descriptions that the complainant set out in her request. The Commissioner has consequently excluded this part of the request from the decision notice.
12. The remaining issues for the Commissioner to consider are therefore the complainant's requests for the reasons for the terminations of [the named individual]'s employment, and the details of any financial payment made to him.

### Chronology

13. On 13 October 2010, the Commissioner wrote to the Council to explain that he had received a complainant about the way it had dealt with this request. The Commissioner asked that the Council provided the withheld information to him.
14. On 18 October 2010, the Council responded to the Commissioner. It provided an extracted confidentiality clause from the compromise agreement signed by [the named individual]. It also explained the

- circumstances of [the named individual]'s departure from the school, and provided a copy of the 'internal review report' produced by the Association of Greater Manchester Authorities ('AGMA').
15. On 25 January 2011 and 8 February 2011 the Commissioner wrote to the Council to ask that it confirmed exactly what information was held in relation to the request and provided this to him. The Council responded on 8 March 2011 with a copy of the compromise agreement.
  16. On 14 February 2011 the complainant provided a submission about why she believed the requested information should be disclosed.

## Analysis

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### Substantive Procedural Matters

#### Section 40

##### *Section 40(2)*

17. Section 40(2) provides an exemption for information which is the personal data of any third party and where either of the conditions set out in section 40(3) is met. (The relevant sections of section 40 are included in the legal annex).
18. In order to rely on the exemption provided by section 40, the information being requested must therefore constitute personal data as defined by the DPA. The DPA defines personal information as:

*'...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 intention of the data controller or any other person in respect of the individual.'*

19. Having reviewed the withheld information the Commissioner is satisfied that it falls within the description of personal data as defined by the DPA. This is because [the named individual] is the focus of the withheld information and can be clearly identified from it.

20. The Commissioner is therefore satisfied that the requested information constitutes [the named individual]'s personal data. It is therefore necessary to decide whether the information is exempt from disclosure under any of the conditions described in section 40(3). The first condition applicable is that described at section 40(3)(a)(i), that disclosure will breach any of the data protection principles.

### ***The first data protection principle***

21. The Council has argued that the withheld information is exempt under section 40(2) because disclosure would breach the first data protection principle.
22. The first data protection principle has two components:
1. Personal data shall be processed fairly and lawfully and
  2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

### **Fairness**

23. In considering whether disclosure of the information requested would comply with the first data protection principle, the Commissioner has first considered whether disclosure would be fair. In assessing fairness, the Commissioner has considered:
- o [the named individual]'s reasonable expectations of what would happen to his personal data
  - o The existence of a compromise agreement between [the named individual] and the Council
  - o [the named individual]'s seniority in the school
  - o Legitimate interests of relevant stakeholders in knowing the details of [the named individual]'s departure from the School.
24. The Council has confirmed that when [the named individual] and the school parted company in June 2010, both parties entered into a compromise agreement which set out the terms of [the named individual]'s departure. The Commissioner recognises the important role that compromise agreements can play in employer/employee relationships. Such agreements can avoid the time, expense and stress of litigation in an Employment Tribunal when the relationship between

employer and employee breaks down. By entering into compromise agreements, public authorities can save significant amounts of public money by avoiding potential litigation. The [Employment Rights Act 1996](#) established the opportunity for parties to enter into a compromise agreement and introduced safeguards to the compromise agreement process which ensure that employees receive independent and accountable legal advice before entering into such agreements.

25. The Commissioner believes that the right to access official information under the Act, and the right to reach an equitable compromise in private in an employment dispute are not mutually exclusive. Therefore, when a public authority decides to enter into an agreement with a senior executive, the Commissioner considers that a balance has to be struck between a public authority's duty to be transparent and accountable with regard to how it spends public money, and its duty to respect a former employee's reasonable expectations of privacy.
26. In respect of this point, the Commissioner's [guidance on section 40](#) makes it clear that the seniority of an official should be taken into account when their personal data is requested under the Act:

"It may also be relevant to think about the seniority of staff generally: the more senior a person is the less likely it will be that to disclose information about him or her acting in an official capacity would be unfair."

27. The Commissioner believes that an employee who makes decisions which involve significant expenditure of public funds should expect greater scrutiny about their decisions than junior colleagues; senior officials are paid out of public funds commensurate with their level of responsibility. In this case the Commissioner understands that [the named individual] held the most senior role in the school in his capacity as headmaster.
28. However, the Commissioner also notes that the compromise agreement entered into by [the named individual] and the School includes a confidentiality clause which is binding on both parties. This states

"...the terms of this agreement...and the circumstances of these proceedings shall remain confidential...In the event that the Employer shall be in breach of the requirement of confidentiality contained in this paragraph, the parties agree that an injunction, in addition to a claim for damages, would be an appropriate remedy... following the conclusion of the agreement the employer will keep the agreement confidential save where it must be

disclosed to the General Teaching Council, other statutory body, the Inland Revenue or another court of law”

29. On the basis of this confidentiality clause the Commissioner finds that [the named individual] would have had a clear expectation that the details surrounding his departure would not be disclosed. The Commissioner notes that the confidentiality clause does not specify an agreed position in the event of an FOIA request. However, the Commissioner considers that the clause could be read widely enough to cover a full disclosure of the requested information.
30. The Commissioner is aware that [the named individual]’s suspension and subsequent departure from the Council’s employment generated coverage in the local press and interest from the local community. The Commissioner accepts that the public do have a legitimate interest in knowing if and how public money has been spent in negotiating staff departures. The complainant points out that this is particularly the case because in June 2010, Ofsted published an [inspection report](#) concerning the School which stated that

“In October 2009 the local authority conducted a review following concerns over the school’s instability in leadership and falling standards in the sixth form and several curriculum areas. The school was issued with a formal warning. One of the School’s deputy headteachers was appointed to the post of acting headteacher following the external review”.

The Commissioner appreciates that there is a legitimate public interest in the details of any payments made to [the named individual] in light of the issues around the effectiveness of leadership prior to his departure.

31. However, the Commissioner believes that the public’s interests must be weighed against the prejudices to [the named individual]’s rights, freedoms and legitimate interests when deciding whether disclosure of the information would be fair. The Commissioner accepts the Council’s contention that [the named individual] would have a strong expectation of privacy and confidentiality over the details of the circumstances of his departure from the school. The Commissioner also notes that there is no suggestion that the school, council nor [the named individual] has placed any information about the outcomes of the suspensions into the public domain.
32. The Commissioner finds that [the named individual] would have a reasonable expectation that information about the circumstances of his departure would remain confidential, and he concludes that the

disclosure of the requested information would be unfair and a breach of the first data protection principle. The Commissioner therefore upholds the Council's application of the exemption provided at section 40(2) of the Act.

### **Section 41**

33. As the Commissioner has determined that the Council was correct to withhold the information under the exemption at section 40 of the Act, he has not gone on to consider the application of section 41.

### **The Decision**

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34. The Commissioner's decision is that the Council was correct to withhold the requested information under section 40(2) of the Act.

### **Steps Required**

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35. The Commissioner does not require the Council to take any further action.



## Right of Appeal

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36. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

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

**Dated the 26<sup>th</sup> day of May 2011**

**Signed .....**

**Lisa Adshead  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## **Legal Annex**

### **Section 40(2) provides that –**

“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.”

### **Section 40(3) provides 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), 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.”

### **Section 40(4) provides that –**

“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).”

### **Section 40(5) provides that –**

“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 the Act were disregarded, or

(ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed)."

**Section 17(1) provides that -**

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

(a) states that fact,

(a) specifies the exemption in question, and

(b) states (if that would not otherwise be apparent) why the exemption applies."