

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 25 February 2013

**Public Authority:** Middlesbrough Council  
**Address:** Middlesbrough Town Hall  
Albert Street  
Middlesbrough  
TS1 2QJ

#### Decision (including any steps ordered)

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1. The complainant has requested information from Middlesbrough Council (the council) regarding the former chief executive's pension. The council relied on section 40(2) to withhold the information because it was the chief executive's personal data and it would be unfair to disclose it to the world at large.
2. The Commissioner's decision is that the council was correct to rely on section 40(2) to withhold the requested information and so he does not require the council to take any steps.

#### Request and response

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3. On 15 June 2012 the complainant made the following request for information to the council:

*"Can you please tell me as the Chief Executive is to retire what will his pension be and will he be receiving any additional benefits."*

4. The council responded on 13 July 2012 refusing to provide the requested information and citing section 40(2) as the reason for doing so. This was because the council considered the information was the personal data of the chief executive and that disclosing it would contravene the first data protection principle which requires that personal data is processed fairly and lawfully.

5. The complainant requested an internal review on 25 July 2012. The council provided the outcome of this on 9 August 2012. It upheld its original position and provided a more detailed explanation of why it considered that disclosing the outgoing chief executive's pension would breach the Data Protection Act 1998 (the DPA), which included the fact that the pension is part of a compromise agreement.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 17 August 2012 to complain about the way his request for information had been handled. In particular he considered that the council's decision to withhold the information was wrong because the public interest was in favour of disclosure.
7. The Commissioner considers the scope of the case to be whether the council was correct to rely on section 40(2) to withhold the requested information.

### **Reasons for decision**

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8. 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."*

9. 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"*

### **Is the information 'personal data'?**

10. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA. In this instance, the Commissioner accepts that information regarding the details of an individual's pension is personal data relating to them as defined by the DPA.

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

11. In its internal review response to the complainant the council argued that disclosure of the outgoing chief executive's pension information would contravene the first data protection principle which states:

*"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".*

12. In deciding whether disclosure of personal data would be unfair the Commissioner has taken into account the following factors:

- The individual's reasonable expectation of what would happen to their personal data.
- The seniority of the individual's position at the council.
- What damage or distress would the individual suffer if the information was disclosed?
- The legitimate interests of the public in knowing the circumstances and terms of the departure of a council employee.

*Reasonable Expectations*

13. The council has explained that the reasonable expectations of the previous chief executive are shaped by what the council routinely publishes and the nature of the information itself. As part of the annual accounts, the council publishes the salaries of its senior officers, and this includes the value of the contributions the council has made in the year to each officer's pension. With regard to the nature of the information the council has explained that the amount of pension that each individual receives is dependent on a number of personal circumstances and choices. For example, an individual can make additional contributions and can decide how to take their pension once they do retire.

14. The council argues that the amount of personal choices that are made in relation to the final value of a pension and the way in which an individual chooses to take it mean that they would not have a reasonable expectation that the information would be disclosed to the public.
15. The council has also argued that in this specific case, the individual's expectations are shaped by a compromise agreement which is in place between the individual and the council. The compromise agreement contains a confidentiality clause and as part of the agreement relates to pension information, the Commissioner accepts that this will shape the individual's reasonable expectations in this case.
16. The Commissioner considers that the individual will have a reasonable expectation that information about the value of their pension will not be routinely disclosed.

### *Seniority*

17. The Commissioner considers that public sector employees should expect some information about their roles and the decisions they take to be disclosed under the FOIA. The Commissioner also believes that a distinction can be drawn about the levels of information which junior staff should expect to have disclosed about them compared to what information senior staff should expect to have disclosed about them. This is because the more senior a member of staff the more likely it is that they will be responsible for making influential policy or expenditure decisions.
18. The Commissioner's general approach is that public sector employees should expect some details about their salary and their role to be placed in the public domain. However, it is reasonable to assume that they would not expect details of their personal pension to be disclosed. Disclosure of such information would clearly lead to a greater infringement into the privacy of individuals as it would reveal specific details about what are clearly personal matters.
19. The council has recognised that the individual's seniority will have an impact on his reasonable expectations. It has explained that the council's information governance awareness programme for staff advises the following:

*"The more senior a member of staff is, the more scrutiny they are likely to face and it is more likely that more information about their roles and decisions will be released than lower paid members of staff with less responsibility. However, it is further understood that information that is personal, sensitive or not*

*work-related, is generally considered to be a private and confidential matter, even amongst senior people."*

In addition to this the council has stated that it advises individuals that the council will publish information such as the salaries of the chief executive and directors in the annual statement.

20. However, the council concluded that there will be a reasonable expectation of all staff, including those at director level and above that the more detailed pension information will be kept confidential as it is not work related and is not routinely published.
21. The Commissioner considers that even though the individual was the most senior member of staff at the council, his expectations of privacy with regard to his pension are still objectively reasonable as it relates far more to his private life than his professional life.

*What damage or distress would the individual suffer if the information was disclosed?*

22. The council has simply stated that it considers the release of these details would cause distress through the unwarranted infringement of the individual's privacy. It added that it would also constitute an actionable breach of an enforceable contract by the council.
23. The Commissioner recognises that the release of the information would be an intrusion into the personal financial circumstances of the individual in question. Therefore, the Commissioner believes it more than probable that disclosure would cause some distress to the individual.

*Legitimate interests of the public*

24. Although the exemption contained in section 40(2) if found to be engaged is absolute and therefore not subject to the public interest test, the Commissioner will still consider legitimate interests in favour of disclosure.
25. In considering the legitimate interests of the public, the Commissioner notes that on the face of it, there would seem to be a public interest in knowing how much money has been spent by a public authority in relation to a senior officer's pension. The complainant has explained that his reason for asking for the information was because the former chief executive had been in post for a short time before taking early retirement. He has argued that there is a strong public interest in disclosure because there have been four chief executives over a 10 year period whilst at the same time the council has been struggling financially and people have lost their jobs. In the circumstances he considers that

there is therefore a public interest in knowing how much the council has spent on the early retirement of the former chief executive.

26. The Commissioner acknowledges that there is a legitimate public interest in knowing how public money is spent. This will include ensuring that a public authority is effectively overseeing the terms of the retirement of an employee.
27. However, the Commissioner also notes that the council does routinely publish the salaries of its senior officers online, alongside the amount it contributes to their pensions on an annual basis. He therefore considers that the public interest in the council's expenditure on the salaries and pensions of senior officers is served by this to some extent.
28. As some information about the council's expenditure on the pensions of its senior officers is in the public domain, and because information about the detail of an individual's pension is inherently personal, the Commissioner considers that the legitimate public interest in disclosure is outweighed by the former chief executive's right to privacy.

## **Conclusion**

29. The Commissioner therefore considers that, allowing for the personal nature of the requested information, its disclosure would be disproportionate in view of the rights of the former chief executive to privacy.
30. In light of the arguments presented above, the Commissioner has concluded that it would not be fair to disclose the requested information, and therefore that the council was correct to rely on section 40(2) to withhold it.

## Right of appeal

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31. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

32. 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.
33. 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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