

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 23 September 2013

**Public Authority:** Sandown Town Council  
**Address:** 1 Broadway  
Sandown  
Isle of Wight  
PO36 9GG

#### **Decision (including any steps ordered)**

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1. The complainant has requested details of the Town Clerk's salary.
2. The Commissioner's decision is that Sandown Town Council has correctly applied the exemption for personal data at section 40(2) of the FOIA (although it did not inform the complainant of the specific exemption being relied upon). He does not require any steps to be taken.

#### **Request and response**

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3. On 4 March 2013, the complainant wrote to Sandown Town Council and requested information in the following terms:  
*"Would you kindly tell me how much you are paid as Town Clerk of Sandown. I make this request under the Freedom of Information Act"*
4. Sandown Town Council responded on 11 April 2013. It provided the salary scale for the position of Town Clerk but refused to provide the exact salary of the current Town Clerk citing her entitlement to privacy.
5. Following an internal review Sandown Town Council wrote to the complainant on 30 April 2013. It stated that it upheld the original decision to provide the salary scale but not the exact salary as the Clerk has a right to privacy.

## **Scope of the case**

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6. On 15 May 2013 the complainant contacted the Information Commissioner's Office in order to register her complaint. The complainant wished specifically to complain about her lack of a satisfactory answer to her request for information.
7. Although the council did not refer to an FOIA exemption when responding to the request, the Commissioner considers the scope of the case to be whether Sandown Town Council has correctly withheld the requested information under section 40(2) of the FOIA.

## **Reasons for decision**

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### **Section 40 – personal information**

8. Section 40(2) of FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles.

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

9. Personal data is defined by the Data Protection Act 1998 (DPA) as any information relating to a living and identifiable individual. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
10. The withheld information is the gross salary figure for an individual. The Commissioner is satisfied that an individual's salary is personal data as defined in the DPA.

### **Would disclosure breach the Data Protection Principles?**

11. The data protection principles are set out in Schedule 1 of the DPA. The first principle, and the most relevant in this case, states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations, in terms of applying the exemption at section 40(2) have focused on this issue of fairness.
12. In considering fairness, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subject, the potential consequences of disclosure, and has balanced the rights and freedoms of the data subject with the legitimate public interest in disclosing the information.

13. It is worthy of mention that the Town Clerk did not provide consent for the information to be released. The role of Town Clerk and the salary it provides is not of a level that the employee in the role would hold an expectation that salary details would be disclosed. The Commissioner takes the view that more senior public sector employees who are responsible for major policy and financial initiatives can expect greater scrutiny of their pay than more junior employees, and that it will generally be unfair to disclose the exact salaries of junior employees.
14. As to the consequences of disclosure upon the data subject, having found that the data subject would hold a strong expectation of privacy in relation to this information, it follows from this that disclosure in contravention of this expectation would result in distress to this individual. The Commissioner also recognises that disclosure of an exact salary of an individual is more intrusive than giving a salary band or pay scale for a post and would give significant information about that individual such as details of their financial standing.
15. The Commissioner recognises that people have a reasonable expectation that a public authority, in its role as a responsible employer and data controller, will not disclose certain information. He considers that information relating to the exact salary of an individual will attract a strong general expectation of privacy as it is inherently personal to the data subject.
16. On the issue of whether there is any legitimate public interest in this information the Commissioner is of the view that there will always be some legitimate public interest in knowing how public money is spent, how public sector salaries compare with those in other areas, and how money is distributed between different levels of staff. However, in this case the Commissioner is of the view that these interests are met by the disclosure of the salary scales. Whilst there is an inherent argument that the information is in the public interest on the basis that disclosure would promote accountability around the issue of use of public funds, the Commissioner takes the view that the Town Clerk's right to privacy outweighs any legitimate interest in publishing the exact salary detail.
17. Having also found that disclosure would be against the reasonable expectation of the data subject and that disclosure, despite that expectation, would be likely to result in distress to the data subject, the Commissioner's decision is that disclosure would be unfair and in breach of the first data protection principle. The exemption provided by section 40(2) is therefore engaged and the Council is not required to disclose this information.

## **Section 17**

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18. Whilst Sandown Town Council's refusal notice did explain why the requested information was being withheld, under section 17(1) of the FOIA a public authority must specify which exemption is being used. The Commissioner would ask that Sandown Town Council ensures it complies with this when handling other requests.

## Right of appeal

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19. 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)

20. 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.
21. 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 .....**

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**