

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

### **Decision notice**

**Date:** 24 June 2014

**Public Authority:** Cheveley Parish Council

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

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1. The complainant has requested a copy of a letter that was mentioned in Cheveley Parish Council's (the council) meeting minutes of 12 February 2013. This was originally refused under section 14, 40 and 41 of the FOIA. During the Commissioner's investigations, the council instead provided the letter but redacted parts of it relying on section 40(2) and 21 of the FOIA to do so. Other than the redacted name of the addressee, the Complainant disagreed with the rest of the council's redactions.
2. The Commissioner's decision is that the council has incorrectly relied on section 21 and 40(2) of the FOIA to the disputed redactions.
3. The Commissioner has also found that the council has breached section 10(1) of the FOIA as it did not provide the information within the required 20 working days from the receipt of the request.
4. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Provide the complainant with a copy of the requested letter as indicated in the confidential annex, which has been provided to the council only.
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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6. On 21 March 2013, the complainant wrote to the council and requested information in the following terms:

*"I request to be given a copy of the letter sent to [name redacted] and mentioned in the Minutes of the 12<sup>th</sup> February Parish Council meeting under item 5.1.1. As this letter presumably mentions me by name, perhaps you should have forwarded me a copy as a matter of courtesy? As I am now (thankfully) a member of the public, I ask that any future correspondence which mentions me by name has my name and details redacted."*

7. On the 21 March 2013 the council responded and advised the complainant that now she is a member of the public, she would need to request a copy of this letter using the correct procedures under the FOIA.

8. On 2 June 2013 the complainant requested:

*"I request to be given a copy of the letter sent to [name redacted] and mentioned in the Minutes of the 12<sup>th</sup> February Parish Council meeting under item 5.1.1. As this letter is known to be available in electronic format, I request that it is sent to me electronically (by email) thus preventing any cost to the Council for either paper or copying (as stated on the now correctly updated Policy & Procedures website)."*

9. The council responded on the 1 July 2013. It refused to provide the requested information relying on section 14, 40, and 41 of the FOIA.

10. The complainant contacted the Commissioner on 13 October 2013 to complain that her request had been refused.

11. Following an internal review by the council, it reconsidered both the requests. On 14 November 2013, it advised that the 21 March 2013 request was vexatious and so refused under section 14 of the FOIA.

12. For the 2 June 2013 request it considered this request also to be vexatious and refused under section 14 of the FOIA. It also considered the information to be exempt from disclosure under section 40 of the FOIA, personal data, and section 41 of the FOIA, information provided in confidence.

13. The complainant advised the Commissioner that she was not satisfied that the information had been refused.
14. As part of the Commissioner's investigations, he wrote to the council to ask it for its reasons for relying on section 14, 40 and 41 of the FOIA.
15. During the course of these investigations the council amended its response and provided a redacted copy of the letter to the complainant on the 9 April 2014. It advised that the redactions had been made under section 40(2) of the FOIA, third party data and section 21 of the FOIA, information accessible by other means; it provided the complainant with a link to the meeting minutes and agenda item.

### **Scope of the case**

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16. The complainant has advised the Commissioner that she is still not satisfied with the council's response and considers the information should be sent to her without the redactions, however, she accepts that the addressee's name can stay redacted.
17. The Commissioner considers the scope of the case is to determine firstly, if the council is correct to rely on section 21 of the FOIA and secondly whether it is correct to rely on section 40(2) of the FOIA to redact the information it has, other than the addressee's name.
18. As the 21 March 2013 and 2 June 2013 requests are for the same information, the Commissioner will consider these requests at the same time.

### **Reasons for decision**

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19. Section 21 of FOIA states that:

*"Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information."*

20. This means that where a complainant is reasonably able to obtain the information from another source then the information is exempt from disclosure under the FOIA.

21. The council has advised that the information is already in the public domain in its 12 February 2013 meeting minutes<sup>1</sup> in agenda item 5.1.1 so has made the redactions it has.
22. The Commissioner has looked at the meeting minutes. He notes that the meeting minutes covers the issues, but the actual letter is not in the minute meetings.
23. The Commissioner notes that in the meeting minutes it states:

*"The Chairman requested that the Clerk write a letter confirming the council's decision to the complainant."*
24. The letter is what the complainant has requested a copy of. There is reference to writing the letter in the meeting minutes, but this letter is not in the meeting minutes and so the Commissioner considers that it is not reasonably accessible to the applicant via the meeting minutes.
25. Therefore the Commissioner considers that the council has incorrectly relied on section 21 of the FOIA.

**Section 40(2) of the FOIA**

26. Section 40(2) of the FOIA states:

*"Any information to which a request for information relates is also exempt if-*

- a) it constitutes personal data which do not fall within subsection (1), and*
- b) either the first of the second condition below is satisfied."*

27. Section 40(2) of the FOIA provides that third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act 1998 (the DPA).

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<sup>1</sup> [www.cheveley-pc.org.uk/item/february-13th-2013.html?category\\_id=32](http://www.cheveley-pc.org.uk/item/february-13th-2013.html?category_id=32)

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

28. Personal data is defined by the DPA as any information which relates to a living individual who can be identified from that data or from that data along with any other information in the possession or is likely to come into the possession of the data controller.
29. The Commissioner has reviewed the redactions, and some of the redactions do 'relate' to living individuals, however some of these redactions would not identify an individual and accordingly it is not personal data. An example of this is the council's redacted website address.
30. The redacted information that the Commissioner considers does fall within the definition of personal data as set out in the DPA, are the redacted names of the individuals in the letter.
31. As the Commissioner has determined that section 40(2) of the FOIA was applied incorrectly to some of the redactions, the Commissioner's decision is that this information should be provided to the complainant.
32. The Commissioner will now consider whether the council were correct to rely on section 40(2) of the FOIA to redact the information that the Commissioner considers constitutes personal data as set out in the DPA and identified in paragraph 30 above.

### **Would disclosure contravene any of the Data Protection Principles?**

33. 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 below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and potential consequences of disclosure against the legitimate public interest in disclosing information.

### **Reasonable expectations**

34. The Commissioner, as part of his investigations, asked the council to further its arguments for applying section 40(2) of the FOIA to the redactions it had. The council did not provide these arguments; it considered spending any more time considering this matter to be excessive and an unreasonable cost to the public purse.
35. The Commissioner understands that the council is a Parish Council, and may have more limited resources than larger council's, but for the Commissioner to be able to get a full understanding of the council's

reasons for applying exemptions, it is something the Commissioner does expect a council to provide him. Failing this, the Commissioner may find it difficult to consider the rationale for council's refusing information and he could therefore order disclosure where maybe an exemption would have been reasonable to support.

36. The Commissioner would expect the council to take note of its responsibilities as a public authority, with regards to the FOIA, and provide cogent responses to his investigations in the future.
37. As the council has not provided further arguments to the Commissioner's investigations as to why it considers that section 40(2) of the FOIA is engaged, the Commissioner is placed in a difficult position. Being the regulator of the Data Protection Act 1998 (DPA), the Commissioner has gone on to consider whether section 40(2) of the FOIA is engaged aware though that better engagement might have given different information on which to base his decision.
38. The redacted information identifies 3 council members.
39. The Commissioner is of the opinion that individuals generally have a reasonable expectation that information that relates to them will not be disclosed to the wider public.
40. He also notes that the individuals are identified, in the 12 February 2013 meeting minutes. He also notes that they are all mentioned in their professional capacity so the expectation of such information being redacted would be less than if it were in their personal capacity and if they were not mentioned in the minute meetings.

### **Consequences of disclosure**

41. As this letter is in reference to a complaint, the Commissioner considers that some distress could be caused to individuals if the names were released.
42. The meeting minutes, which are publically available, already identify who will be writing the letter and who it is about and all in their professional capacities. So the extent to any consequence of disclosure of the withheld information in the letter is severely lessened, in the Commissioner's view.

### **Balancing the rights and freedoms of the data subjects with the legitimate interests in disclosure.**

43. The Commissioner acknowledges the fact that the FOIA is in place to encourage openness and transparency of public authorities, but also it

has exemptions to allow an authority to withhold types of information for good reasons, such as protecting third party's information rights.

44. The Commissioner accepts that there is a strong legitimate interest in protecting third party information which is held by a public authority.
45. However as noted previously, the professional identities of the individuals are already in the public domain with regards to this complaint. So this significantly lessens any consequences of disclosure, and with that, the Commissioner considers it would be fair and lawful, in the circumstances of this case, to provide the requested information to the complainant without these redactions.
46. As the council has pointed out, the substance of the letter is contained within the publically available minutes. The request focuses on the letter itself and as the content largely mirrors what the council have already included in the minutes, little weight can be given to what the council might consider to be against the expectations of the individuals.
47. Therefore the Commissioner finds that the council has incorrectly relied on section 40(2) of the FOIA to redact the information that has been disputed by the complainant.

### **Section 10(1) of the FOIA**

48. Section 10 of the FOIA states:

*"...a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."*

49. The complainant requested the information on the 21 March 2013 and 2 June 2013. The council responded on the 1 July 2013, refusing to provide it.
50. The Commissioner has found that the council incorrectly relied on section 21 and section 40(2) of the FOIA to redact the majority of the information. This information has not been provided to the complainant within the required 20 working days from the receipt of the request.
51. Therefore the Commissioner finds that the council has breached section 10(1) of the FOIA.

### **Other Matters**

52. The council appear to have overlooked the fact that any information requested that relates to the requestor herself should have been considered under the DPA. It appears unlikely that her name would be

withheld from her under either Act. Nonetheless, this should be considered at the same time by the council and the Commissioner will write separately on this matter.



## Right of appeal

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53. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

54. 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.
55. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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**SK9 5AF**