

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 19 June 2014

Public Authority: Office of the Police and Crime Commissioner for Devon, Cornwall and the Isles of Scilly

Address: Endeavour House
Woodwater Park
Pynes Hill
Exeter
EX2 5WH

Decision (including any steps ordered)

1. The complainant has requested details of the departure of a Chief Executive.
2. The Commissioner's decision is that the Office of the Police and Crime Commissioner for Devon, Cornwall and the Isles of Scilly has applied section 40(2) appropriately to the requested information.
3. The Commissioner does not require the public authority to take any further steps.

Request and response

4. On 26 November 2013 the complainant wrote to the Office of the Police and Crime Commissioner for Devon, Cornwall and the Isles of Scilly (PCC) and requested information in the following terms:

"Please could the Commissioner provide me with details of the departure of [name removed] as Chief Executive of his office. What was the reason for her leaving and has she been given (or is she to receive) any form of compensation for loss of office? If so, how much and on what basis has that payment been made?"

5. The PCC responded on 24 December 2013 and provided some information within the scope of the request but refused to provide details of any remuneration paid to the Chief Executive. It cited the following exemptions as the basis for doing so:
 - Section 41 (confidentiality)
 - Section 40(2) (personal information)
 - Section 43 (commercial interest)
6. Following an internal review the PCC wrote to the complainant on 23 January 2014, upholding its original decision.

Scope of the case

7. The complainant contacted the Commissioner on 22 January 2014 to complain about the way his request for information had been handled. He wants the details of any financial settlement.
8. During the Commissioner's investigation the PCC decided not to apply section 43(2) any longer. Therefore, the Commissioner will consider whether the PCC has applied sections 40(2) and 41 appropriately.

Reasons for decision

Section 40 – personal information

9. Section 40(2) of FOIA provides an exemption from disclosure of information which is the personal data of a third party and where disclosure would breach any of the data protection principles contained in the Data Protection Act (the DPA) or section 10 of that Act.
10. In order to rely on section 40 (2) the requested information must constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as:

' ... data which relate to a living individual who can be identified

a) From these 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.'

Is the information personal data?

11. The first question for the Commissioner to consider is whether the requested information is personal data as defined in section 1 of the DPA.
12. The PCC provided the withheld information to the Commissioner which consisted of a copy of the settlement agreement between the PCC and the Chief Executive.
13. Having considered the withheld information the Commissioner is satisfied that it constitutes the personal data of the Chief Executive.
14. The Commissioner will therefore go on to consider whether the information should be disclosed, taking into account that any information disclosed would be a disclosure of personal data.

Would disclosure breach any of the data protection principles?

15. The first protection principle deals with the privacy rights of individuals and the balance between those rights and other legitimate interests in processing personal data. It states that:

*"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".*

16. In the case of an FOI request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be fair, lawful and meet one of the DPA Schedule 2 conditions. If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.

Would it be fair to disclose the requested information?

17. When considering the fairness element of the first data protection principle, the Commissioner takes into account a number of factors depending on the circumstances of each case. In this case, he considered:
 - the reasonable expectations of the data subjects and the nature of the information;
 - the consequences of disclosure; and
 - any legitimate interests in the public having access to the information.

Reasonable expectations of the data subjects

18. The PCC explained to the Commissioner that the Chief Executive in question had not given her consent to the disclosure of the requested information. The PCC argued that the information was private information and that, as it contained a confidentiality clause, it would be reasonable for the Chief Executive to expect that the information would not be disclosed.
19. The Commissioner acknowledges that there will be circumstances where for example, due to the nature of the information and/or the consequences of it being disclosed, an individual will have a strong expectation that the information will not be disclosed. The Commissioner's guidance on requests for personal data about public sector employees¹ states that:

"Employees' expectations as to what information will be released will have to take into account of statutory or other requirements to publish information. For example, the Accounts and Audit Amendment (no 2) (England) Regulations 2009 requires local authorities, fire and police authorities and certain other bodies in England to publish in their annual accounts the amounts paid to employees in connection with the termination of their employment, if their total remuneration is over £50,000. These amounts are published by job title of the total remuneration is between £50,000 and £150,000 and by name if it is over £150,000."

20. In this case, the position was such that details of any severance payment she received are subject to the requirements of the regulations above.
21. Taking everything into account, the Commissioner considers that the Chief Executive would have a reasonable expectation that the requested information in its entirety would not be disclosed.

Consequence of disclosure

1

[http://www.ico.org.uk/~/media/documents/library/Environmental_info_reg/Practical_application/section\)40_requests_for_personal_data_about_employees.ashx](http://www.ico.org.uk/~/media/documents/library/Environmental_info_reg/Practical_application/section)40_requests_for_personal_data_about_employees.ashx)

22. When considering the consequences of disclosure in this case, the Commissioner has taken into account the nature of the withheld information. He has also considered the fact that disclosure under FOIA is to the world at large and not just to the complainant.
23. Given the nature of the information and the reasonable expectations of the Chief Executive, the Commissioner is satisfied that disclosure of the withheld information could cause unnecessary and unjustified distress to her.

Any legitimate interests in the public having access to the information

24. The Commissioner considers that disclosure of information can help promote transparency and accountability. In this case, it could also help show how public money is being spent.
25. The PCC pointed out that it is required to publish in its annual accounts, the amount paid to the Chief Executive in connection with the termination of her employment by reference to her job title but not by name. The PCC explained that this meant that the amount paid to the Chief Executive would be known at that time. However, this would not include the details of the settlement agreement.
26. The Commissioner has found no evidence that the Chief Executive has sought to put any details of her agreement into the public domain.

Balancing the rights and freedoms of the data subject with legitimate interests

27. Despite the reasonable expectations of the Chief Executive and the fact that damage or distress may result from disclosure, it may still be fair to disclose the information if there is an overriding legitimate interest in disclosure to the public.
28. The Commissioner accepts that there is a wider public interest in transparency when it comes to settlement agreements. However, in this case, the amount paid to the Chief Executive will be made available, as discussed above, albeit she will not be named.
29. In the circumstances of this case, the Commissioner does not consider that the legitimate interest in the public accessing the full details of the settlement agreement would outweigh the potential damage and distress which could be caused to the data subject by disclosure of the information. Additionally, any party who is interested in the accounts of the PCC will be able to ascertain its outgoings when they are available

and this will, in the Commissioner's view, meet any related public interest in the matter.

30. Therefore, the Commissioner does not consider that disclosure of the withheld information is necessary to meet a legitimate public interest.
31. In view of the above, the Commissioner is satisfied that the withheld information is the personal data of the Chief Executive and that disclosure of it would breach the first data protection principle, as it would be unfair.
32. As the Commissioner has determined that it would be unfair to disclose the requested personal data, it is not necessary to go on to consider whether disclosure is lawful or whether one of the conditions in Schedule 2 of the DPA are met. Section 40(2) is an absolute exemption, therefore there is no need to consider the public interest in disclosure.
33. As the Commissioner is satisfied that section 40(2) applies to the requested information, he has not gone on to consider the council's application of section 41.

Right of appeal

34. 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

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

35. 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.
36. 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

Jon Manners
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