

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 August 2014

Public Authority: Long Sutton Parish Council
Address: 134 London Road
Long Sutton
Lincolnshire
PE12 9EE

Decision (including any steps ordered)

1. The complainant has requested details of three PAYE/NI payments to HMRC which were made between 2009 and 2013. Long Sutton Parish Council (the "Council") provided three redacted HMRC statements. It later explained to the Commissioner that the withheld data is third party personal data.
2. The Commissioner's decision is that the Council has correctly applied section 40(2) to the withheld information in this case. However in failing to provide a valid refusal notice the Council is in breach of section 17 of the FOIA. No steps are required.

Request and response

3. On 24 February 2014, the complainant wrote to the Council and requested information in the following terms:

"Please supply the details of the calculation of the following payments and the reasons involved:

<i>HMRC PAYE/NI</i>	<i>2009/10</i>	<i>£2468.45</i>
<i>HMRC PAYE/NI</i>	<i>2011/12</i>	<i>£1379.00</i>
<i>HMRC PAYE/NI</i>	<i>2013/13</i>	<i>£3783.13"</i>

4. The Council provided the complainant with three redacted HMRC statements.
5. The complainant submitted a complaint to the Information Commissioner on 15 March 2014 and on 25 March 2014 the Commissioner asked him to request an internal review. The Commissioner also informed the Council that it should perform the review when asked and that it should explain which exemptions under the FOIA had been applied to the redacted information.
6. An internal review was requested on 25 March 2014 however this was not provided.
7. The Commissioner again asked the Council to perform an internal review on 13 May 2014 and the Council explained that it was in the process of conducting a review. It confirmed it had withheld third party personal data from the provided information.

Scope of the case

8. The complainant again contacted the Commissioner on 16 June 2014 to confirm that he had still not received an internal review and to complain about the way his request for information had been handled.
9. The Commissioner considers this case to be concerned with the application of section 40(2) to the withheld information. It is also concerned with the failure of the Council to provide a refusal notice to the complainant under section 17 of the FOIA.

Reasons for decision

Section 40(2): third party personal data

10. Section 40(2) of FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles.
11. 'Personal data' is defined under section 1(1) of the Data Protection Act 1998 (the "DPA") as data which relates to a living individual who can be identified from that data, or from that data and other information which is in the possession of the data controller or is likely to come into the possession of the data controller.

12. The Commissioner considers that because there are only three redacted statements in this case, there is a high risk of identification of the individual(s) concerned. He considers that as the numbers involved are so low, the data is not sufficiently anonymous to allow disclosure.
13. The Commissioner is therefore satisfied that the data requested relates to living individual(s) who may be identified from that data and that it constitutes personal data.

Would complying with section 1(1)(b) contravene the first data protection principle?

14. The first principle of the DPA states that personal data must be processed fairly and lawfully.
15. In considering whether it would be unfair to provide information concerning the tax affairs of any individual and whether this would therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:
 - the consequences of disclosure;
 - the data subject's reasonable expectations of what would happen to their personal data; and
 - the balance between the rights and freedoms of the data subject and the legitimate interests of the public.

Reasonable expectations

16. The withheld information in this case relates to the tax affairs of the individual(s) concerned. The Commissioner considers any individual has a reasonable expectation that his/her personal data concerning tax affairs would not be disclosed to the public under the FOIA.

Consequences of disclosure

17. The Council has not provided the Commissioner with any detailed explanation as to the possible consequences of disclosure. However, the Commissioner is satisfied that disclosure would be contrary to the expectations of the individual(s) and would be an invasion of their privacy. He therefore considers that it is likely disclosure would cause some distress to the individual(s) concerned.

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

18. The complainant has argued that it is of concern that the PAYE/NI payments of the Council got into arrears over a four year period. He has argued that the internal auditor failed to identify anything unusual but that this individual is not fully independent.
19. The complainant has argued that the parish is suffering under gross maladministration.
20. It could be argued there is a legitimate public interest in publishing information about the tax details of the individuals involved in the running of the Council. Disclosing information of this nature often promotes transparency and accountability. The Commissioner also considers that there is a legitimate interest in the public being confident that a parish council is being run efficiently.
21. However the Commissioner considers that the provision of the redacted HMRC underpayment documents meets this legitimate interest and demonstrates that the Council is acting in a transparent manner.
22. The Commissioner cannot investigate the charge of maladministration.

Conclusion

23. The Commissioner is mindful that there is a tension between public access to information and the need to protect personal information. However he cannot see any legitimate public interest in disclosure in this case.
24. He is satisfied that the individual(s) concerned would have no reasonable expectation that the information in question would be disclosed to the world at large. HMRC does not routinely publish such tax information.
25. The Commissioner is therefore satisfied that providing further tax information would be unwarranted by reason of prejudice to the rights, freedoms and legitimate interests of the individual(s) in question. He therefore considers that the Council was correct to redact this information under section 40(2) of the FOIA.

Section 17: Refusal of request

26. Section 17(1) provides that a public authority must clearly explain which exemption it is relying on to withhold information, and why.

27. The Council provided three redacted HMRC documents to the complainant but did not inform him why it had redacted the withheld information or which exemption it had applied. The Council therefore did not set out any substantial arguments as to why the exemption applied.
28. The Commissioner has therefore found the Council to be in breach of section 17(1)(a)(b) and (c) of the FOIA.
29. In its refusal notice the Council also failed to inform the complainant of its internal review procedure and of his right to complain to the Commissioner. This is therefore a breach of section 17(7)(a) and (b) of the FOIA.

Other matters

30. Although they do not form part of this decision notice the Commissioner wishes to highlight the following matters of concern:
31. On 25 March 2014 the Commissioner informed the Council that it should perform an internal review when requested to do so. The complainant asked the Council for a review on 25 March 2014. This was not provided and the Commissioner wrote to the Council again on 13 May 2014 again asking for a review to be completed.
32. Paragraph 39 of the section 45 Code of Practice states:

"The complaints procedure should provide a fair and thorough review of handling issues and of decisions taken pursuant to the Act, including decisions taken about where the public interest lies in respect of exempt information. It should enable a fresh decision to be taken on a reconsideration of all the factors relevant to the issue."
33. Part VI of the section 45 Code of Practice makes it desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information.
34. The Commissioner considers that these internal reviews should be completed as promptly as possible and he considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review.
35. The Commissioner is concerned that the Council did not provide an internal review in this case.

Right of Appeal

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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

37. 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.
38. 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

Rachael Cragg
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