

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 4 August 2014

**Public Authority:** Bracknell Forest Council  
**Address:** Easthampstead House  
Town Square  
Bracknell  
Berkshire  
RG12 1AQ

### Decision (including any steps ordered)

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1. The complainant has requested information relating to council tax payments by councillors. The Commissioner's decision is that Bracknell Forest Council has correctly applied the exemption for personal data at section 40(2) of the FOIA to the names of councillors who were issued with a council tax reminder letter. He does not require the public authority to take the any steps to ensure compliance with the legislation.

### Request and response

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2. On 2 January 2014 the complainant wrote to Bracknell Forest Council ('the council') and requested information in the following terms:  
  
"Under the Freedom Of Information Act please can you supply the relevant information on 1) the two Bracknell Forest Councillors [sic] their **NAMES** or their wards that they represent that have failed to pay their council tax as by 2/1/2014 printed in Bracknell News.  
  
2) is there any **liability** orders been made by the council against its councillors to **retrieve** said monies by deduction from wages if so can you release the information.

And 3) under the same F.O.I request I would also like to know has any councillor [sic] applied to the council for a **TAX REDUCTION** or a **TAX DISCOUNT** if so please can you release such information."

3. On 10 January 2014 the complainant made the following request for information under the FOIA:

"Please provide the names of all councillors referred to in the council's response to the request from Bracknell News in relation to Council Tax reminders."

4. The council responded to the first request on 4 February 2014 and refused to provide the information requested at points 1 and 3 citing the exemption at section 40(2) of the FOIA. It also provided the response 'No' to point 2 of the request.
5. The council responded to the second request on 7 February 2014 and refused to provide the information requested citing the exemption at section 40(2) of the FOIA.
6. The council provided an internal review of the second request on 17 February 2014 in which it maintained its original position.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 2 March 2014 to complain about the way his request for information had been handled.
  8. The complainant has confirmed that the information he requested on 10 January 2014 is the same information as he was seeking at point 1 of the request made on 2 January 2014. The council has also confirmed that the information held is the same for both requests. The council has also confirmed that no councillor was in receipt of a council tax reduction or discount. Therefore, the Commissioner has considered whether the council was correct to apply the exemption at section 40(2) of the FOIA to point 1 of the request made on 2 January 2014.
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## Reasons for decision

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### Section 40(2)

9. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the Act would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').

10. In order to rely on the exemption provided by section 40(2), the requested information must therefore constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as follows:

“personal data” means data which relate to a living individual who can be identified –

(a) from those 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 intentions of the data controller or any other person in respect of the individual.”

11. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the data protection principles under the DPA. The Commissioner notes in this case that, in its internal review response, the council said that disclosure would breach the first data protection principle.

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

12. As explained above, the first consideration is whether the withheld information is personal data. The Commissioner is satisfied that the requested names of the councillors are personal data. The council said that the councillors' wards are also personal data in these circumstances because the ward is data relating to a living individual who can be identified from the data or from other data in the possession of the data processor. It explained that there are only two or three councillors per ward and therefore if their wards were disclosed, the particular councillors could easily be identified by a simple process of elimination. It said that the other councillor or councillors in the ward would be approached to make denials and the councillors would be identified as a consequence of that process. The council referred to a previous

decision<sup>1</sup>, in which the Commissioner concluded that an address was personal data, as it is possible in many cases to identify the owner/tenant from other information which is in the public domain, stating that this situation is on all fours with that case as the same can be said of the ward in the case of a councillor. The Commissioner is satisfied that in this case the requested wards of the councillors are personal data.

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

13. As the Commissioner is satisfied that the withheld information is personal data, he now needs to consider whether disclosure would breach any of the data protection principles.
14. Although the council's internal review response stated that disclosure would breach the first data protection principle, in its response to the Commissioner's enquiries it also referred to fair processing (the second principle), the data subjects rights (the sixth principle) and appropriate organisational measures (the seventh principle). However, as stated in his guidance on personal data<sup>2</sup>, for the purposes of disclosure under FOIA, it is only the first principle that is likely to be relevant. Therefore the Commissioner's decision in this case is focused on whether disclosure would breach the first data protection principle, i.e. would disclosure be unfair and/or unlawful.
15. The first data protection principle 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, and
  - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."
16. In deciding whether disclosure of this information would be unfair, the Commissioner has taken into account the nature of the information, the

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<sup>1</sup> [http://ico.org.uk/~media/documents/decisionnotices/2010/FS\\_50280148.ashx](http://ico.org.uk/~media/documents/decisionnotices/2010/FS_50280148.ashx)

<sup>2</sup>

[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf)

reasonable expectations of the data subjects, the consequences of disclosure on those data subjects and balanced the rights and freedoms of the data subjects with the legitimate interests in disclosure.

17. The council said that the nature and content of the information requested is private personal data. It said that councillors are informed that any activity they undertake in their constituencies whilst discharging their functions as councillors is subject to the FOIA but that they are entitled to the same rights as everyone else in respect of their private lives as long as their private lives do not breach the law or the Code of Conduct for Members. It said that the councillors enjoy the same rights under Article 8 of the European Convention on Human Rights to rights of home, family, correspondence and privacy as their constituents.
18. The council explained that the councillors' concerned did not give their consent for their personal data to be disclosed under this request and that the councillors are being treated in exactly the same way if a request was made for a list of constituents who had received a reminder letter to make arrangements to pay their council tax. It said that a constituent who receives a reminder letter would not be identified.
19. In relation to the consequences of disclosure, council said that disclosure would cause unnecessary and unjustified damage and distress to the two councillors and would be a breach of confidence. It said that an individual's financial liabilities are a personal and private matter not for public consumption via an information request. It acknowledged that the Commissioner has made distinctions between private and public life but said that on the facts of this case the act was a private one and that the data is personal information which is protected from publication under section 40(2).
20. The council said that it accepts that a higher degree of scrutiny applies in relation to public office and that the FOIA applies to councillor's public functions but that council tax in these circumstances is purely within the parameters of private life. It said that had the particular councillors made public pronouncements concerning the way their constituents are sent reminder letters then some commentators might say they have crossed the line and allowed their private life to become interfaced with their role as councillors and the public interest may have leaned towards disclosure. However, it said that this is not the case here as there was no associated comment, political or other action on the councillor's part that should take it into the realms of their public roles and functions. The Commissioner considers that this relates to whether there is any legitimate interest in disclosure.

21. The Commissioner notes that the article referred to in the request states;

“TWO Bracknell Forest councillors have had to be reminded on three occasions to pay their council tax in less than three years<sup>3</sup>.”

22. He therefore asked the council whether any further action was necessary in relation to the issuing of council tax reminder letters for either councillor. The council explained that both councillors paid on receipt of the first reminder letter. No further reminder letter or action was required and no court proceedings or debt recovery was necessary. It also said that neither councillor was disbarred from voting and participating in budget matters as their errors were corrected as soon as they came to light on receipt of the first reminder letter and payment was made.
23. The council also said that there were mitigating circumstances as to why the council tax had not been paid on time, those being administrative errors on the part of the councillor or their banks.
24. The council referred to two previous cases<sup>4</sup> involving Bolton Council and Cornwall cases relating to the payment of council tax by councillors (one of which was appealed to the First Tier Tribunal<sup>5</sup> who upheld the Commissioner's decision). It said that there would be great unfairness if its councillors, who remedied their error on a single reminder, were made public when by contrast in the Bolton and Cornwall cases the information was not ordered to be disclosed yet those cases entailed second reminders and court proceedings to secure compliance with the council tax payments. It acknowledged that each case must be determined on its individual facts and merits but said that the Bolton and Cornwall principles should apply to this case and the identity of the councillors should not be disclosed. It said that it adopts the arguments in the Bolton and Cornwall cases.

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<sup>3</sup> <http://www.bracknellnews.co.uk/news/bracknell/articles/2014/01/02/96444-councillors-fail-to-pay-tax-three-times/#c>

<sup>4</sup> [http://www.ico.org.uk/~media/documents/decisionnotices/2014/fs\\_50499885.ashx](http://www.ico.org.uk/~media/documents/decisionnotices/2014/fs_50499885.ashx) (Bolton)

[http://ico.org.uk/~media/documents/decisionnotices/2012/fs\\_50410847.ashx](http://ico.org.uk/~media/documents/decisionnotices/2012/fs_50410847.ashx) (Cornwall)

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[http://www.informationtribunal.gov.uk/DBFiles/Decision/i1323/Haslam,%20Dale%20EA.2014.0029%20\(03.07.14\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i1323/Haslam,%20Dale%20EA.2014.0029%20(03.07.14).pdf)

25. In relation to the nature of the information and the individuals' reasonable expectations, the Commissioner acknowledges that any debt arising from a private property is a private debt between those registered to pay council tax and at the property and the council, and is not directly related to the performance of the role of councillor. However, as stated in the Bolton case, he considers that it should be within the reasonable expectations of an individual who has taken public office to expect a higher degree of scrutiny than a private individual and that information which impinges on their public office might be disclosed. He considers that it is reasonable for councillors to expect that recent failure to pay council tax in a private capacity is likely to impact on public perceptions and confidence in those who have put themselves forward for such a public role.
26. In relation to the consequences of disclosure on the individual, as stated in the Cornwall case, the Commissioner accepts that there is an unquantifiable risk attached to the requested information being disclosed as it concerns individuals in public office and the public perception that their conduct might have fallen short of expected standards or the principles outlined in a council's code of conduct. Although he considers it to be a reputational risk, the release of specific names might provoke a hostile reaction.
27. Notwithstanding the individuals' reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling legitimate interest in disclosure. Such 'legitimate interests' can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.
28. The complainant said that it is unfair on the tax payers of the borough that councillors escape the legal realms of the council for falling to pay council tax on time or for non-payment and that a councillor shouldn't be any different to a private individual. He also suggested that it is reasonable for the public to know if councillors are falling below the standards in the code of conduct under the Localism Act 2011.
29. As stated in the Cornwall case, in the Commissioner's view the public has a legitimate interest in satisfying itself that councillors who set and spend public money on council tax are paying that tax themselves. The Commissioner also recognises that when voting to elect councillors the public is asked to make a judgement on their character and that the information requested could be informative in this regard were any individuals to stand for re-election.
30. However, the Commissioner appreciates that each case needs to be considered on its own merits. He has noted the circumstances of the

particular individuals in question and the mitigating circumstances which explain why the councillors had not paid their council tax on time and therefore received a reminder in relation to non-payment. The Commissioner accepts that such mitigating circumstances impact on whether disclosure of a councillor's name would be fair as they legitimately increase the councillors' expectations that they would not be publically named. The Commissioner makes a distinction in this case from the situations in Bolton and Cornwall due to the fact that in this case, no further action was required after the first reminder letter due to the payments being made, which, in the Commissioner's opinion, reduces any legitimate interest in disclosure and increases the councillors' reasonable expectations that their names would not be disclosed. The Commissioner has also taken into account that the issuing of a first reminder letter is not particularly uncommon. He considers that the councillors' rights and freedoms are not outweighed by the legitimate public interest in disclosure, and accepts that disclosure of the personal data in this case could cause damage and distress and would be unfair and unnecessary in the circumstances. The Commissioner therefore considers that the exemption at section 40(2), by way of section 40(3)(a)(i), is engaged and that the council was correct to withhold the requested information.

31. As the Commissioner has decided that the disclosure of this information would be unfair, and therefore in breach of the first principle of the DPA, he has not gone on to consider whether there is a Schedule 2 condition for processing the information in question.



## Right of appeal

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32. 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)

33. 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.
34. 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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**Cheshire**  
**SK9 5AF**