

Freedom of Information Act 2000 (FOIA)

Date: 12 May 2015

Public Authority: Broseley Town Council
Address: Unit 6, The Instones Building
The Square
Broseley
Shropshire
TF12 5EW

Decision (including any steps ordered)

1. The complainant has requested information concerning the financial arrangements of the Broseley Town Council's Birch Meadow Café Project and also for details of the Town Clerk's salary. The Council has relied on section 14(1) to withhold information in respect of the Café Project and on section 40(2) to withhold details of its Clerk's salary.
2. The Commissioner's decision is that Broseley Town Council has correctly applied sections 14(1) and 40(2) to the information which the complainant seeks.
3. The Commissioner requires the public authority to disclose to the public the pay scale of its Town Clerk. He does not require the Council to disclose the exact details of her pay.
4. The public Council must take this step 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

5. On 11 August 2014, the complainant wrote to Broseley Town Council ("the Council") and requested information in the following terms:

"I write to obtain answers to incomplete responses to my previous requests under the Freedom of Information Act 2000:

In the Council's response to my letter dated 10 December 2013 and 27 January 2014 the responses have not fully addressed my requests. Therefore I would like to know: Where the sum of £33,376.08 (from the year ending March 2013) comes from which has been spent on the Birch Meadow project? Including the names and addresses of the providers. And, why was the sum required for this project?

Where has the sum of £51,464.82 (from the year ending March 2012) come from which has been spent on the Birch Meadow project? Including the names and addresses of the providers. And, why was this sum required for this project?

The dates the grant of £50,957.33 was received as Broseley Town Council have advised this grant was received in three stages in their letter dated 13 February 2014.

The date the contribution from each source was made for the grant of £50,957.33. Including the names and addresses of the providers. And, why was this sum required for this project?

As the Birch Meadow Café Project finished on time and on budget in 2012 and was opened by a Shropshire Council Committee, why is it not open, especially as so much money has been poured into this project?

What is the Town Clerk's annual salary? As she is paid by the public purse, this information should be readily available. I have spoken to Wellington, Shifnal and Bridgnorth Council who have all advised that this information is public.

Why did Peter Smith – the deputy Mayor approach myself and Billy Hislop at Victoria Hall Coffee Morning and accuse me of harassment when I enquired what the Town Clerk's wages were? Especially as this information is public within other councils.

I do not feel that the mistreatment I have received has been necessary when requesting information under the freedom of information act. In addition to this, I believe the Clerk is in breach of Broseley Town Council's code of conduct under accountability when she ushered my neighbour – Millie Spencer and myself out of her office on 31 July 2012."

6. The Council sent the complainant an initial response to his request on 8 September, which advised him that it had already answered his questions regarding the financing of the Birchmeadow Centre Café Project and that the salary paid to the Town Clerk is personal and would not be provided.

7. The Council made a second response to the complainant on 3 November following the intervention of the Information Commissioner. The Council issued a refusal notice in respect of the requests relating to the Birchmeadow Café Project and the Town Clerks salary.
8. The refusal notice stated that the Council "has already provided answers to your repeated questions about this project and therefore refuses to provide any further information in relation to the financing of this project. This refusal is covered by the exemption for vexatious requests under Section 14(1) of the Freedom of Information Act 2000. The Clerk's salary is personal and is covered by the exemption for personal data under Section 40(2) of the Freedom of Information Act 2000".

Scope of the case

9. The complainant contacted the Commissioner on 6 October 2014 to complain about the way his request for information had been handled.
10. The complainant was particularly concerned about the figures which the Council had published in its accounts which relate to the Council's Birch Meadow Café Project. His complaint was primarily focussed on how the Council had arrived at various figures and the sources of various monies.
11. The Commissioner's investigation has necessarily been focussed on the Council's application of sections 14(1) and 40(2) of the FOIA and not on the figures shown in the Council's accounts. This notice sets out the Commissioner's decision.

Reasons for decision

Information relating To the Birch Meadow Café Project

Section 14(1) – Vexatious requests

12. Section 14(1) of FOIA states that section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious. There is no public interest test.

13. The term 'vexatious' is not defined in the legislation. In *Information Commissioner v Devon County Council & Dransfield*¹ the Upper Tribunal took the view that the ordinary dictionary definition of the word vexatious is only of limited use, because the question of whether a request is vexatious ultimately depends upon the circumstances surrounding that request. The Tribunal concluded that 'vexatious' could be defined as the "...manifestly unjustified, inappropriate or improper use of a formal procedure" (paragraph 27). The decision clearly establishes that the concepts of 'proportionality' and 'justification' are central to any consideration of whether a request is vexatious.
14. In the *Dransfield* case, the Upper Tribunal also found it instructive to assess the question of whether a request is truly vexatious by considering four broad issues: (1) the burden imposed by the request (on the public and its staff); (2) the motive of the requester; (3) the value or serious purpose of the request; and (4) and harassment or distress of and to staff.
15. The Upper Tribunal did, however, also caution that these considerations were not meant to be exhaustive. Rather, it stressed the "importance of adopting a holistic and broad approach to the determination of whether a request is vexatious or not, emphasising the attributes of manifest unreasonableness, irresponsibility and, especially where there is a previous course of dealings, the lack of proportionality that typically characterise vexatious requests" (paragraph 45).
16. The Commissioner has therefore considered whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress in relation to the serious purpose and value of the request. He considers there is in effect a balancing exercise to be undertaken, weighing the evidence of the request's impact on the authority against its purpose and value.
17. The Commissioner has identified a number of "indicators" which may be useful in identifying vexatious requests. These are set out in his published guidance on vexatious requests². The fact that a request contains one or more of these indicators will not necessarily mean that it must be vexatious. All the circumstances of a case will need to be considered in reaching a judgement as to whether a request is vexatious.

¹ UKUT 440 (AAC) (28 January 2013)

² http://www.ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx

The Commissioners findings

18. It is clear to the Commissioner that the complainant has been pursuing a focussed line of enquiry since June 2013, about the finances associated with the Birch Meadow Café Project.
19. It is equally clear that the Council has purposely engaged with the complainant about his enquiries during the ensuing period and has done so with apparent good will.
20. The Council has provided the complainant with recorded information, together with answers to a raft of questions which have been contained in the complainant's correspondence.
21. The information provided to the complainant appears to the Commissioner to properly account for the Council's expenditure on the Café Project.
22. The Council has provided the Commissioner with its 'purchaser ledger accounts' relevant to the Café Project, and also the final year statement of accounts and the relevant section of its Annual Return. It has also supplied the Commissioner with copies of its External Auditor's certificate and opinion for 2012 and for 2013.
23. The Commissioner has seen no evidence of any unlawfulness in respect of the Café Project or with the Council's accounts. On the contrary the evidence which the Council has provided illustrates that its accounts are accurate and well maintained.
24. The complainant's on-going correspondence and enquiries have apparently been made in an attempt to reconcile the recorded information he has been given by the Council – and also by Shropshire County Council, with what he believes is at best confusing and at worst at variance with the Council's accounts.
25. The Council's position is that it has provided the complainant with detailed information relating to the Café Project on numerous occasions and that it can add nothing further on that subject. The documentation which the Council holds concerning the Shropshire Council grants – which the Commissioner has seen, constitutes the recorded information held by the Council. The Council strongly asserts that it can only comment on its own recorded information and on the information which the County Council has provided to the complainant.
26. The complainant's enquiries have, on the whole, been made with equal good will, although the Commissioner has seen evidence suggesting that the complainant has also mounted a campaign against the Council which

he has made public through the dissemination of posters which are critical of the Council.

27. The Council's application of section 14(1) has come at a point where the Council has determined that it can no longer keep addressing the complainant's enquiries about the Café Project, and where it asserts it has already provided him with as much information as it can. Essentially the point has been reached where the Council has said enough is enough.
28. The Council has provided the Commissioner with a detailed chronology of the complainant's requests and copies of the information it has provided the complainant since July 2013.
29. Most of the complainant's requests have been centred on the Birch Meadow Café Project, although some have stemmed from the deterioration in the relationship he has with the Council. This is particularly so in respect of the elements of complainant's request which concerns the details of the Town Clerk's salary and the accusation about the complainant's alleged harassment of the Council.

The effect on the Council of the complainant's requests

30. The Council has been in correspondence with the complainant since February 2010 and since November 2013 in respect of the Café Project. On the whole the Council has complied with the complainants requests for information in good faith, either under the provisions of the FOIA or under its normal business procedures. It has provided the complainant with information about the financing of the Café on numerous occasions and it asserts that it can add nothing further on that subject.
31. The Council employs three part-time office staff. It has a Town Clerk who works 23 hours per week, a Responsible Finance Officer who works for 12 hours per week, and also an Administrative Assistant who works for 10 hours per week.
32. The Council asserts that the complainants repeated requests on matters it has already exhausted, take up a disproportionate amount of its Officers time, as well as the time of the Town's volunteer councillors.
33. The Council considers that the resources needed to deal with the complainant's Café-related requests represent a significant burden and diminish the availability of resources available for its other responsibilities.

The Commissioner's conclusion

34. An inevitable consequence of the complainant's many requests is the imposition on the Council of a significant and disproportionate burden. This burden comes from the time and resources the Council has needed to devote to the complainant's requests.
35. The Commissioner considers that any reasonable person would conclude that the burden imposed on the Council by the complainant's requests has reached the point where it must be regarded as being unwarranted and disproportionate.
36. The Commissioner has some sympathy with the complainant in wanting to know and to understand the details of the Council's expenditure on the Café Project. However, it appears that the Council has given the complainant all the information it can give.
37. The complainant's repeated requests, which he has made following many of the disclosures of information made by the Council, illustrate that he is often dissatisfied with the responses he has received. There is sufficient evidence for the Commissioner to conclude that no matter how the Council responds to the complainant's requests the complainant will continue to make further information requests. This pattern of behaviour has now reached the point where the Commissioner is comfortable in concluding that the complainant's request of 18 January 2014 has effectively imposed a significant burden on the Council in terms of its time and resources. It is for this sole reason that the Commissioner has determined that the Council is entitled to rely on section 14(1) in respect of the complainant's request for Café-related financial information.
38. The Commissioner must be mindful of the resources available to public authorities for dealing with information requests. In this case, the Commissioner is satisfied that the Council has nothing more to add to the recorded information it has already provided to the complainant. This is further reason why the burden imposed by the complainant's requests should be considered as being vexatious.

Details of the Town Clerk's salary

Section 40(2) – personal data

39. The Council has relied on section 40(2) of the FOIA to withhold information concerning its Clerk's salary.
40. Section 40(2) provides an exemption from disclosure, for information which is the personal data of any third party and where disclosure would

breach any of the data protection principles contained in the Data Protection Act 1998 ("the DPA") or section 10 of that Act.

41. In order to rely on the exemption provided by section 40, the information being sought must constitute personal data as defined by the DPA. The DPA defines personal data as:

'...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 or, 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 to the individual.'

42. The Commissioner is satisfied that the information sought by the complainant is the personal data of the Town Clerk.

43. The Commissioner must now consider whether disclosure of the requested information would breach any of the data protection principles contained in Schedule 1 of the DPA. He considers that the first data protection principle is the one most relevant in this case.

The first data protection principle

44. The first data protection principle has two components:

1. Personal data must be processed fairly and lawfully, and

2. Personal data shall not be processed unless one of the conditions in Schedule 2 of the DPA is met.

45. The Council assert that an employee would have a reasonable expectation that specific details of her salary would not be made available to the public and that to disclose her salary would be unfair.

46. This is the case with any of its employees whose salary is less than £50,000 per annum and it is compliant with the provisions of the Accounts and Audit (Amendment No. 2) Regulations 2009.

47. 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.

48. In considering fairness, the Commissioner has taken into account the nature of the information, the reasonable expectations of the Town Clerk, 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.
49. It is worthy of mention that the Town Clerk did not provide consent for the information to be released and it was she who provided the response detailing the entitlement to privacy but providing salary scales.
50. 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 staff who are responsible for major policy and financial initiatives can expect greater scrutiny of their pay than more junior employees and that it will nearly always be unfair to disclose the exact salaries of junior employees. The Commissioner's view is that it would be unfair in this case.
51. As to the consequences of disclosure upon the Town Clerk, 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.
52. 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.
53. 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 would be met by the disclosure of the Town Clerk's salary scale.
54. The Commissioner recognises that the Town Clerk's salary pay scale 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 the public interest in publishing the exact salary details, but does not outweigh the public interest in disclosing her pay scale. It is for this reason that the Commissioner requires the Council to disclose the Clerk's salary pay scale to the public.

55. The Commissioner has decided that the Clerk's right to privacy far outweighs any legitimate public interest in favour of disclosure of her exact salary details. 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.

Right of appeal

56. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

57. 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.
58. 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
Wilmslow
Cheshire
SK9 5AF