

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 February 2015

Public Authority: Lymington and Pennington Town Council

Address: Town Council Office
Town Hall
Avenue Road
Lymington
Hampshire
SO41 9ZG

Decision (including any steps ordered)

1. The complainant has requested a copy of a letter of resignation from Lymington and Pennington Town Council's former finance officer and a copy of the current Town Clerk's Terms of Employment and Job Description.
2. The Commissioner's decision is that the Council has properly applied section 40(2) of the FOIA to the letter of resignation it received from its former finance officer and it is entitled to withhold this.
3. The Commissioner has also decided that the Council unable to rely on section 40(2) of the FOIA to withhold the terms of employment and job description of its now-former Town Clerk.
4. The Commissioner requires the public authority to take the following step to ensure compliance with the legislation:
 - The Council must disclose to the complainant copies of the terms of employment and job description of its now-former Town Clerk. The Council may redact the signature of its former employee.
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

6. On 18 October 2014, the complainant wrote to Lymington and Pennington Town Council ("the Council") and asked to be provided with:

*"1. a copy of [a named person's] letter of resignation.
2. a copy of [the former Town Clerk's] Terms of Employment/Job Description. This has been requested previously in my letter to Mayor White dated 10 September 2014."*
7. The Council responded to the complainant on 24 October. In its letter, the Council advised the complainant that, 'as the information you seek is of a personal nature as described in section 40 of the Act I am unable to accede to your request'.
8. The complainant wrote to the Council again on 16 November. In his letter he again made the same request for recorded information.
9. The Council responded to the complainant's renewed request on 24 November, again advising him that the information he seeks is of a personal nature as described by section 40 of the Act. The Council advised the complainant of his right to appeal the Council's decision to the Information Commissioner.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
11. The focus of the Commissioner's investigation was to determine whether the Council handled the complainant's request in accordance with the FOIA, and specifically, whether the Council is entitled to rely on section 40(2) of the FOIA to withhold the recorded information sought by the complainant.

Reasons for decision

The finance officer's letter of resignation

Section 40(2) – the personal data of a third party

12. The Council has relied on section 40(2) of the FOIA to withhold the letter of resignation it received from its former finance officer and it has

confirmed its belief that the first data protection principle would be contravened should it disclose this information.

13. 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.

14. In order to rely on the exemption provided by section 40, the requested information 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.'

15. The Commissioner has examined the letter of resignation sent to the Council by its former finance officer. He is satisfied that the letter is entirely personal data.

16. 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

17. 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.

18. The Council asserts that it would be unfair to its former finance officer to disclose a copy of her letter of resignation to the public.

19. In order to determine whether disclosure of the letter would be unfair to the former finance officer, the Commissioner has considered what might be her legitimate expectations of privacy in respect of her letter.

20. In the Commissioner's opinion an employee would have a reasonable expectation that recorded information relating to their employment, including the termination of that employment, would not generally be made available to the public.
21. The Commissioner recognises the letter sought by the complainant relates to the former finance officer's professional role – specifically the termination of that role.
22. It is the Commissioner's opinion it is a generally recognised principle that a person's correspondence is private and confidential; even where the contents of that correspondence relates to their employment.
23. In order to counter-balance an expectation of privacy there would need to be good reasons or circumstances in a particular case which would warrant disclosure. These reasons and circumstances would need to give to a legitimate and necessary interest.
24. The Commissioner can adduce no good reason or circumstance in this case which would warrant the disclosure of this letter of resignation and he therefore finds that its disclosure would be unfair.
25. Having reached this conclusion the Commissioner is not required to consider whether any of the conditions of Schedule 2 of the Data Protection Act 1998 could be met to allow disclosure. He would however point out that it is the 'fact' that the finance officer resigned her post, and not the reasons which lie it which is of legitimate interest to the wider public.
26. The Commissioner's decision is that the Council has properly applied section 40(2) of the FOIA to its former finance officer's letter of resignation and it is therefore entitled to withhold it.

The Town Clerk's terms of employment and job description

27. The Council has relied on section 40(2) of the FOIA to withhold the 'Current' Town Clerk's terms of employment and job description. The Council has also confirmed to the Commissioner its belief that the first data protection principle would be contravened if it was to disclose this information.
28. Since the complainant made his information request the Town Clerk has resigned his post. The Commissioner's decision therefore relates to the information which was held by the Council at the time it received the request and not to its locum Town Clerk.

29. The Commissioner has reviewed both documents. He is satisfied that the information is the personal data of the Council's now-former Town Clerk, but only by virtue of the fact that he was the occupant of that role.
30. The information contained in both documents is generic to the post of Town Clerk and it is not of any unique biographical significance to the individual concerned. The Commissioner has found no part of either document to have been written solely with the individual person in mind.
31. The information itself relates to the Council's most senior and public facing officer and as such the Commissioner considers that the public would have a legitimate interest in knowing what the duties of the Town Clerk are. It is also information which the Council acknowledges would normally be provided to applicants should a vacancy for this role arise.
32. The Commissioner has found nothing in the arguments advanced by the Council which support its position that disclosure of the terms of employment and job description would be unfair to its former Town Clerk. He has not been required to consider whether any of the conditions in Schedule 6 of the DPA can be met to permit disclosure.
33. The Commissioner's decision is that the Council is not able to rely on section 40(2) to withhold this information.

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: 0870 739 5836

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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF