

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 April 2015

Public Authority: North Huish Parish Council

Address: northhuishpc@googlemail.com

Decision (including any steps ordered)

1. The complainant has requested the email address of a councillor. North Huish Parish Council (the council) refused the request relying on section 40(2) of the FOIA as it considers the information to be personal data.
2. The Commissioner's decision is that the council has correctly relied on section 40(2) of the FOIA to refuse the request.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 22 September 2014, the complainant wrote to the council and requested information in the following terms:

"Please could you provide Councillor [name redacted] email address I would like to write to him personally"

5. The council responded on 24 September 2014. It stated that it is not able to give out councillor emails without permission, which is usually refused.
6. The complainant contacted the Commissioner on 18 October 2014 as the council was not prepared to provide the information requested. The Commissioner then wrote to the council informing it to respond in accordance with the FOIA, as it had not stated any exemption for refusing the request.
7. The Commissioner suggested that the council look to address this in an internal review, as the complainant had expressed to the council, in

correspondence dated 25 September 2014, that she was not satisfied with its response.

8. The council wrote to the complainant on the 5 November 2014 refusing to provide the requested email address, relying on section 40(2) of the FOIA. It then provided its internal review on the 11 December 2014 maintaining its decision to withhold the information.

Scope of the case

9. The complainant has told the Commissioner that she is not satisfied with the council refusing her request.
10. The Commissioner considers the scope of the case is to determine whether the council is correct to rely on section 40(2) of the FOIA to refuse the requested email address of councillor [name redacted].

Reasons for decision

Section 40(2) of the FOIA

11. Section 40(2) of the FOIA states that:

"Any information to which a request for information relates is also exempt if-

- a) It constitutes personal data which do not fall within subsection (1), and*
- b) either the first of the second condition below is satisfied."*

12. Section 40(2) of the FOIA provides that third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the DPA.

Is the withheld information personal data?

13. Personal data is defined by the DPA as any information which relates to a living individual who can be identified from that data or from that data along with any other information in the possession or is likely to come into the possession of the data controller.
14. The council has told the Commissioner that the councillor's email address was set up by the councillor as a personal email address.

15. The Commissioner is satisfied that the email address would constitute the personal data of the councillor as it 'relates to' a living individual.

Would disclosure contravene any of the Data Protection Principles?

16. 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 below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of disclosure against the legitimate public interest in disclosing information.

Reasonable expectations

17. The withheld information is the email address of a councillor [name redacted]. The council has explained to the Commissioner that the email address was set up by the councillor, not by the council.
18. The council is of the view that the councillor would have a reasonable expectation that the email address would remain private as it was given to the clerk of the council to facilitate communication between them both and it was only given under the expressed wish that it should not be given to a third party.
19. The Commissioner does consider that a councillor would have expectations that their personal email address would be kept private, especially if it was only given so they could both communicate with each other. At the same time, there would be an expectation that they, as a councillor, would be contactable.
20. The council has told the Commissioner that the councillor's actual address and telephone numbers are readily available for anyone to use and it is possible for members of the public to contact councillors by email via the council's website by emailing a generic email address and you include the name of the councillor you are emailing. The council has noted that this way of emailing a councillor via its website was set up after the complainant had been refused access to the councillors email address.

Consequences of disclosure

21. The council considers that to provide the email address could lead to unwelcome harassment for the councillor.

22. The council also considers schedule 7 of the DPA suggests that disclosure of this personal information would be unfair as its use is not necessary for the complainant to contact the councillor.
23. The Commissioner does see that some distress could be caused to the councillor if their personal email address was made publically available, especially as the email address was only provided to the council on the premise that it was to be used so that they could both correspond with each other and not to be shared any further.

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

24. The council has stated that councillors can be contacted by letter, phone, and by personal approach to their homes or by email via the council website, or by email through the clerk.
25. The council states parishioners are also encouraged to come to council meetings or to ask someone to represent them at council meetings. All of its meetings are open to the public and start with an open forum, where the public are encouraged to address council matters of concern to them.
26. The council minutes are also published on its website and placed on two notice boards within the parish. Councillor's names and addresses are published on the parish notice board.
27. The complainant stated that she was told by the clerk to look up the councillor's phone number in the phone book. The complainant sees therefore that if councillors have contact information publically available in a phone book, then section 40(2) should not apply to any contact details in any requested form.
28. The Commissioner does not consider that because an address and phone number may be publically available in a phone book, that this would automatically mean that an email should also be made publically available.
29. The complainant has stated that although councillor postal addresses have been supplied since December 2014, some are not full postal addresses and therefore does not consider that a resident can be sure that a councillor will receive a letter if sent.
30. The Commissioner has checked the address that is publically available for the councillor in this case, and it appears to him that the address given is sufficient in detail for mail to be sent to.

31. Also the complainant notes that although the council website has a contact form for each parish councillor, it is probable that these are sent to one email address which she considers in this case would be the clerk and there is no guarantee that the individual councillor would receive the email.
32. The Commissioner does not see speculation as to whether the clerk would or would not forward on an email that was for a councillor to carry much weight for the argument of disclosure. Especially if this has been set up especially for a way for the public to contact councillors via email.
33. The Commissioner sees that there are avenues provided for councillor's to be contacted which include their phone number and address details. Also emails to the Clerk can be passed on to councillors and following the request, the website now enables councillors to be emailed via that route.
34. The Commissioner sees that there is a legitimate public interest for the public to be able to contact its councillors.
35. In the Commissioner's view though, there appears to be sufficient means for the public to be able to contact the councillors and considers that to disclose the councillor's personal email that was given to the clerk so they can correspond with each other would not be in the reasonable expectations of their rights and freedoms under the DPA, also when considering the council has not been given consent to provide the information.
36. Had the email address be set up and provided to the councillor by the council in order to carry out council duties, then there may be more weight added to any legitimate interest in disclosure. The Commissioner has had to bear in mind that this is a personal email address.
37. Therefore, the Commissioner finds that providing the email address would be unfair to the councillor and so the council has correctly relied on section 40(2) of the FOIA to refuse the request.

Right of appeal

38. 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

39. 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.
40. 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
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