

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 July 2016

Public Authority: Cheshire East Council
Address: Westfields
Middlewich Road
Sandbach
Cheshire
CW11 1HQ

Decision (including any steps ordered)

1. The complainant has made a request to Cheshire East Council ("the council") for information about the redundancy of a former council officer. The council disclosed some information but withheld the remainder under the exemption provided by section 40(2). The complainant contested the council's application of this exemption.
2. The Commissioner's decision is that the council has correctly withheld the information under section 40(2).
3. He does not require any steps to be taken.

Request and response

4. On 18 July 2015 the complainant wrote to the council and requested information in the following terms:
 - 1) *What were the terms of [redacted name]'s recent redundancy?*
 - 2) *What was her final salary, including employer pension contributions, NI contributions and any other employer contributions for the use of a car, private health insurance etc?*
 - 3) *What were the terms of her redundancy and what was her redundancy payment?*
 - 4) *Was there a confidentiality clause?*

5. The council responded on 6 August 2015. It referred the complainant to information that was already in the public domain, and advised that the remainder of the requested information was confidential and could not be provided.
6. The complainant requested an internal review on 6 August 2015.
7. Following an internal review the council wrote to the complainant on 22 September 2015. It disclosed information in respect of parts 2 and 4, but withheld the information sought by parts 1 and 3 under section 41.

Scope of the case

8. The complainant initially contacted the Commissioner on 16 November 2015 to complain about the way his request for information had been handled, and specifically that the council had incorrectly withheld information under section 41.
9. During the course of the Commissioner's investigation it became evident that the withheld information represents personal data, and may also be exempt from public disclosure under the exemption provided for personal data by section 40(2). Notwithstanding this the council identified some further information (namely the sums of redundancy payments made) that it considered suitable for disclosure, and this information was provided to the complainant on 20 June 2016.
10. The Commissioner therefore considers the scope of this case to be the determination of whether the council has correctly withheld the remaining information under section 40(2).

Reasons for decision

Section 40(2) – The personal data of third parties

11. Section 40(2) provides that:

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

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

12. Section 40(3) provides that:

The first condition is–

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene–

(i) any of the data protection principles...

Is the withheld information personal data?

13. Personal data is defined by section 1 of the Data Protection Act 1998 ("the DPA") 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 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 data controller or any person in respect of the individual...

14. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the Data Protection Act ("the DPA"). In this instance the Commissioner has reviewed the information that has been withheld and has identified that it relates to the named individual and the termination of their employment with the council. On this basis the Commissioner accepts that the information in its entirety is the personal data of the named individual.

Would disclosure breach the data protection principles?

15. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
16. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations of the data subject

17. When considering whether a disclosure of personal information is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
18. In this case the council has proposed that the named individual, who was previously a senior council officer, would not have a reasonable expectation of their personal data being disclosed into the public realm. This is because the withheld information pertains to the termination of the named individual's employment, and that disclosure of the information by either party would represent an actionable breach of confidence.

Consequences of disclosure

19. The council considers that disclosure would represent an actionable breach of confidence, and on this basis has focussed its submissions on the relevance of section 41. The council has also advised that as the individual has now left the council's employment, the disclosure of the withheld information would adversely affect the individual's private life.

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

20. The Commissioner recognises that the individual held a significantly senior role within the council, and as such would be likely to hold some expectation of public scrutiny in relation to their actions whilst in post. Whilst the Commissioner has therefore considered this factor, it is evident that the withheld information relates to the individual's employment rather than public responsibilities. In decision notice FS50438500¹ the Commissioner defined the distinction between information about the public role of an individual, and information contained within personnel files about an individual's employment. As explained in that decision the Commissioner and the First-tier Tribunal ("the Tribunal") have previously placed a strong weight on the disclosure of personal information where this relates to the accountability of actions by senior public or civil servants in their official capacity, rather

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2012/774398/fs_50438500.pdf

than the management of their employment. Although there is a public interest in ensuring that proper employment processes have been followed in the circumstances of this case, the Commissioner is not aware of any public evidence that provides plausible suspicion that this has not been so, which would strengthen the legitimate interest in disclosure.

21. The Commissioner is further aware that the information relates to the individual's redundancy, and that redundancy payments made to the individual have already been publically disclosed. The disclosure of such information corresponds with the decision reached by the Tribunal in the case of *Gibson v Information Commissioner and Craven District Council* (EA/2010/0095), in which the Tribunal found that the legitimate interest of the public only outweighed the prejudice to the rights, freedoms or legitimate interests of the individual to the extent that the information concerned the use of public funds. As such the Commissioner recognises that the release of further information regarding the individual's redundancy, including the specific terms agreed between the individual and the council, would interfere with the rights, freedoms and legitimate interests of the individual as a data subject.

The Commissioner's conclusion

22. There is always some legitimate public interest in the disclosure of any information held by public authorities. This is because disclosure of information helps to promote transparency and accountability amongst public authorities. This in turn may assist members of the public in understanding decisions taken by public authorities and perhaps even to participate more in decision-making processes.
23. However, having considered the circumstances of this case, the Commissioner has concluded that releasing the withheld information would not be within the expectations of the individual to whom it pertains. This is because the information represents the terms agreed between the individual and council in respect of the individual's redundancy.
24. A legitimate public interest in the matter has been addressed through the release of information about the redundancy, including the public cost and the general policies that the council follows in such a scenario. The Commissioner considers that this disclosure is proportionate to the position that the individual held within the council.
25. The Commissioner further notes, as he did in his decision notice for FS50438500, that the release of the withheld information would have the potential to impede the council to deal effectively with personnel issues in the future. This is because the routine disclosure of such

information could inhibit the negotiation that allows public authorities to manage the departure of senior officers in a cost effective manner.

26. In view of the above, the Commissioner finds that disclosing the withheld information would contravene the first data protection principal because it would be unfair, and that the application of section 40(2) was correct.

Right of appeal

27. 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

28. 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.
29. 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