

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 November 2019

Public Authority: Hextable Parish Council
Address: College Road
Swanley
Kent
BR8 7LT

Decision (including any steps ordered)

1. The complainant has requested copies of bank statements, payment lists and staff expense claims from March 2017 – March 2018 from Hextable Parish Council (“the Council”).
2. The Commissioner’s decision is that the Council has correctly applied section 40(2) to the withheld information. The Commissioner considers the Council to have breached section 1(1) of the FOIA by failing to provide the complainant with all of the information it holds within the statutory timeframe of 20 working days.
3. The Commissioner does not require the public authority to take any further steps.

Request and response

4. On 29 May 2018, the complainant wrote to the Council and requested information in the following terms:

"Re your announcement of the 25th May 2018, can you send me the Hextable Parish Council Payments and receipts list from March 2017-end of March 2018 plus copies of statements for both bank Accounts."

5. The Council replied to the complainant on 8 June 2018. They provided some information within the scope of the request but redacted certain information from specific statements stating that this was personal information.
6. The complainant contacted the Council on 15 June 2018 and explained that they considered the following information to be missing in response to their request. For ease of reference, the Commissioner has numbered parts of this correspondence which are later referred to as 'part 1', 'part 2' and 'part 3' of the request:

"1. Information on the following expenses:

*Expenses 19.07.2017 Petty Cash
Expenses 31.10.2017 Petty Cash
Expenses 24.01.2017 Petty Cash*

2. The names of beneficiaries in the salary payments with the payment amount redacted.

3. The names of beneficiaries in the salary payments with the payment amount redacted.

*13.04.2017
10.04.2017
12.05.2017
14.06.2017
13.07.2017
10.08.2017
11.09.2017
10.10.2017
09.11.2017
08.12.2017*

08.01.2018
09.02.2018
09.03.2018"

7. The public authority responded on 25 October 2018. It stated the following in response to each three points in the request:
 1. *You were provided with details of the expense claims by the clerk*
 2. *There are four members of staff who we employ (redacted)*
 3. *The names redacted for confidentiality as each of these transactions contain personal information of individual salary payments, and our staff have not consented to this being provided*
8. The complainant contacted the Council again on 26 November 2018. According to the complainant, the Council had failed to provide them with information on specific petty cash expenses. The complainant also asked to see unredacted copies of the information already provided to them in response to parts 2 and 3 of their request.
9. The Council responded on 11 December 2018 and, in response to part 1 of the request, provided staff expense claim forms dated 19 July 2017 and 19 October 2017. The Council confirmed that it did not hold a staff expense form for 24 January 2017.
10. In response to parts 2 and 3 of the request, the Council refused to provide unredacted copies of a payment list and bank statement under section 40 of the FOIA. The Council instead provided an aggregate salary figure amounting to all staff salaries paid in the year 2017/18 and the names of 6 beneficiaries that received payments from this figure.
11. In correspondence dated 5 March 2019, the complainant made an amendment to part 1 of their request and asked the Council for the information it held subject to an expense claim dated 24 January 2018 (as opposed to 24 January 2017).
12. In their correspondence of 11 April 2019, the Council provided the complainant with an expense claim form dated 17 January 2018. It noted that this expense claim had initially been dated 24 January 2018 in error and so was related to the expense claim that the complainant was seeking.

Scope of the case

13. The complainant contacted the Commissioner on 1 May 2019 to complain about the way his request for information had been handled.
14. When establishing the scope of her investigation, the Commissioner considered the information provided to the complainant concerning petty cash expenses to satisfy part 1 of the request. For this reason, the Commissioner will not give further consideration to part 1 of the request in this decision notice.
15. The Commissioner therefore considers the scope of her investigation to be to establish whether the public authority is entitled to withhold the information requested in parts 2 and 3 of the request under section 40 of the FOIA.

Reasons for decision

Section 40 personal information

16. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
17. In this case the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
18. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of the FOIA cannot apply.
19. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

¹ As amended by Schedule 19 Paragraph 58(3) DPA

Is the information personal data?

20. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

21. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
22. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
23. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
24. In the circumstances of this case, having considered a sample of the withheld information, the Commissioner is satisfied that the information relates to the names and related salary payments of specific members of Council staff. This is clearly information that both relates to and identifies those concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
25. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
26. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

27. Article 5(1)(a) of the GDPR states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

28. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
29. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the GDPR

30. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"².

31. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:-

i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;

ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;

iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

32. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

33. In considering any legitimate interest(s) in the disclosure of the requested information under the FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.

² Article 6(1) goes on to state that:-

"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".

34. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
35. The complainant in this instance is seeking unredacted copies of financial statements from the Council in order to investigate what he considers to be "discrepancies" in the management of its finances.
36. The Commissioner notes that the complainant in this case has a legitimate interest in establishing how the Council apportions public money, which may include information about individual salary payments.

Is disclosure necessary?

37. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
38. The Commissioner is satisfied in this case that there are no less intrusive means of achieving the legitimate aims identified. This is because the requested information constitutes the names of specific members of council staff and information relating to their salary payments. Disclosure under the FOIA is disclosure to the "world at large" and disclosing this information in response to the request would clearly identify the individuals concerned.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

39. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
40. In considering this balancing test, the Commissioner has taken into account the following factors:
 - the potential harm or distress that disclosure may cause;

- whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
41. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
 42. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
 43. As stated previously, the withheld information in this case includes information relating to the names and related salary information of specific members of Council staff. The public authority in this case is a small Parish Council and the information the complainant is requesting relates to a small number of individuals employed at the Council.
 44. Whilst these individuals are paid for the work they carry out in their professional role, the Commissioner considers information concerning individual salary payments to possess significant information about that individual's personal financial circumstances. Disclosing the information in this instance would not be the same as a larger public authority publishing information relating to generic pay scales for certain posts.
 45. The staff members in this instance have provided their financial information to the Council in order to be paid for the work they do for that organisation and not for the express purpose of disclosure under the FOIA. Having said this, the Commissioner recognises that there is a legitimate public interest in knowing how money is apportioned across an organisation.
 46. The Commissioner notes that the Council in this case publishes salary-related information in their annual accounts. This information includes the total expenditure, or payments made to and behalf of, all employees.
 47. As part of their response to this request the Council have also provided the complainant with the names of these individual staff members and an "aggregate amount" of salary information that is not routinely published. The Commissioner considers the Council to have disclosed enough information in this case to meet the legitimate interests identified whilst maintaining the privacy rights of the employee.

48. For the above reasons, the Commissioner does not consider there to be a reasonable expectation that the unredacted copies of the statements provided in response to parts 2 and 3 of his request should be disclosed to the "world at large" in response to a request under the FOIA.
 49. The Commissioner has seen no evidence or indication that the individuals concerned have specifically consented to this data being disclosed to the world at large or that they have deliberately made this data public. The Commissioner is therefore confident that disclosure in this instance would result in unwarranted damage or distress to these individuals.
 50. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms.
 51. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.
 52. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that she does not need to go on to separately consider whether disclosure would be fair or transparent.
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Other matters

53. Although not forming part of the formal decision notice the Commissioner uses 'Others Matters' to address issues that have become apparent as a result of a complaint or her investigation of that complaint and which are causes for concern.
54. In their response to the request the Council stated that they considered information relating to staff salary payments to be "personal information" under section 40 of the FOIA. The Commissioner notes that, whilst section 40 is clearly engaged, the Council failed to specify which subsection is engaged and why.
55. In this case the information is the personal information of third parties and, for the reasons already stated in this decision notice, section 40(2) of the FOIA is engaged. The Commissioner recommends that the Council state which subsection applies when handling similar requests in future.

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@justice.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

Mr Phillip Angell
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SK9 5AF