

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 August 2022

Public Authority: Biggleswade Town Council
Address: The Old Court House
4 Saffron Road
Biggleswade
SG18 8DL

Decision (including any steps ordered)

1. The complainant has requested information about staffing costs. Biggleswade Town Council ('the Council') disclosed the majority of the requested information. It withheld information about settlement agreements under section 40(2) of FOIA as it considered this to be other people's personal data which it would be unlawful to disclose.
2. The Commissioner's decision is as follows:
 - The Council is entitled to withhold some of the information the complainant has requested under section 40(2) of FOIA as disclosing it would contravene the data protection legislation.
3. The Commissioner therefore does not require the Council to take any corrective steps.

Request and response

4. On 29 March 2022 the complainant wrote to the Council and requested information in the following terms:

"Staffing costs for 3 financial years up to 31st March 2022, broken down by year, to include;

 1. Total staffing costs and number of full time equivalents

2. Total costs broken down into permanent staffing costs, agency, or temporary staffing costs and consultant fees and any other relevant categories.

3. The number of non-disclosure agreements signed. The costs of any severance/COT3/legally binding settlement agreements made.

4. Costs and job titles of all salaries over £50k pa as set out in the DCLG Transparency Code 2015.

Budgeted total staffing costs and number of full time equivalents for the financial year 2022/23 broken down into permanent staffing costs, agency or temporary staffing costs and consultant fees and any other relevant categories."

5. The Council responded on 26 April 2022. It disclosed the majority of the requested information but withheld information about any settlement agreements under section 40(2) of FOIA.
6. The complainant requested an internal review on 27 April 2022. They acknowledged that, broken down by year, there may be so few individuals at the Council that it may be possible to identify a specific person. The complainant said that, if that were the case, they would be content for the data for the three years to be combined, for example three agreements at a total cost of £125,000.
7. Following an internal review the Council wrote to the complainant on 28 April 2022. It maintained its reliance on section 40(2).

Scope of the case

8. The complainant contacted the Commissioner on 28 April 2022 to complain about the way their request for information had been handled.
9. The Commissioner's investigation has focussed on whether the Council is entitled to withhold the information about settlement agreements under section 40(2) of FOIA.

Reasons for decision

Section 40 personal information

10. 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.

11. 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 UK General Data Protection Regulation ('UK GDPR').
12. 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.
13. Second, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

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

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

15. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
16. 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.
17. 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.
18. The Commissioner considers that, in the context of a very small public authority, the likelihood of people having local knowledge and the small numbers involved, it would be possible to link the requested information

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

to a specific individual or individuals. The information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.

19. 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.
20. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

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

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

22. 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.
23. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

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

24. Article 6(1) of the UK GDPR specifies the requirements for lawful processing by providing that “processing shall be lawful only if and to the extent that at least one of the” lawful bases for processing listed in the Article applies.
25. 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.

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”.

26. In considering the application of Article 6(1)(f) of the UK 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.
27. 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

28. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that 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. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA and by Schedule 3, Part 2, paragraph 20 the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019) provides that:-

"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK 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".

29. The complainant has an interest in the Council's staffing costs and that is a valid interest for them to have. There is also a wider public interest in public authorities being open and transparent.

Is disclosure necessary?

30. '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.
31. The Commissioner considers that disclosure would be necessary to address the specifics of the complainant's interest and the wider public interest in transparency.

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

32. It is necessary to balance the legitimate interests in disclosure against the data subjects' 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.
33. 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.
34. 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 individuals' 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.
35. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to those individuals.

36. The information being withheld concerns costs associated with any settlement agreements. The Commissioner considers that any individual/individuals involved in any settlement agreement would reasonably expect that information about that agreement would not be disclosed to the world at large under FOIA. As such, disclosing that information would cause those individual(s) harm or distress.
37. The Commissioner considers that the complainant's interest and the wider interest in transparency has been met to an adequate degree through the information the Council has disclosed.
38. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subject's/s' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information in question would not be lawful.
39. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he does not need to go on to separately consider whether disclosure would be fair or transparent.

The Commissioner's view

40. The Commissioner has therefore decided that the Council was entitled to withhold the information under section 40(2), by way of section 40(3A)(a).

Right of appeal

41. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

42. 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.
43. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF