

Freedom of Information Act 2000 (Section 50)

Decision Notice

5 October 2010

Public Authority: City of London
Address: PO Box 270
Guildhall
London
EC2P 2EJ

Summary

The complainant asked the City of London (CoL) to release a copy of the minutes of a meeting that took place with the Church of Scientology Religious Education College Incorporated on 30 August 2006 concerning its application for mandatory rate relief. The CoL responded refusing to disclose the requested information under sections 31(1)(d), 40(2) and 41(1) of the Act. As the complainant remained dissatisfied he approached the Commissioner. Following a detailed investigation the Commissioner has decided that sections 31(1)(d), 40(2) and 41(1) of the Act do not apply in this case. He has therefore requested that CoL release the requested information to the complainant within 35 days of this Notice.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The complainant contacted the City of London ("CoL") on 9 June 2009 to request the following information:

"Please provide agenda, minutes, and any other records of the meeting on 30 August 2006 between legal representatives of Church of Scientology Religious Education College Incorporated ("COSREC") and the City of London ("CoL") to discuss COSREC's appeal following refusals by the CoL of mandatory rate relief."

3. The CoL responded on 7 July 2009. It confirmed that it holds the minutes of the meeting that took place on 30 August 2006. However, it was unwilling to disclose this information, as it considered that it was exempt from disclosure under sections 31(1)(d), 40(2) and 41(1) of the Act.
4. The complainant contacted the CoL on 10 July 2009 to request an internal review.
5. The CoL responded further on 6 August 2009. It confirmed that it remained of the opinion that section 31(1)(d), 40(2) and 41(1) of the Act applied.

The Investigation

Scope of the case

6. On 23 August 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the CoL's application of sections 31(1)(d), 40(2) and 41(1) to the requested information and whether it should be released under the Act.

Chronology

7. The Commissioner wrote to the CoL on 16 September 2009 to confirm that the complaint had been accepted for formal consideration and to request a copy of the withheld information.
8. The CoL responded on 16 October 2009. It provided a copy of the withheld information and some useful background to the case.
9. The Commissioner wrote to the CoL on 26 January 2010 to request further more detailed arguments concerning its application of section 41(1) in the first instance.
10. The CoL replied on 9 March 2010 providing the additional information requested in respect of its application of section 41(1) of the Act. It also explained in more detail why it was of the view that section

31(1)(d) of the Act applied to the withheld information and why it felt section 40(2) applied to a section of the document.

11. The Commissioner wrote to the CoL on 2 June 2010 to request additional arguments to support its application of sections 31(1)(d) and 41 of the Act. He referred the CoL to the recent Information Tribunal hearing of *Mr William Thackeray v Information Commissioner and the Common Council of the City of London (EA/2009/00958)* in which the Tribunal made strong comments relating to the disclosure of this type of information relating to COSREC.
12. The CoL responded on 19 July 2010 providing its further response. The CoL did not provide any further in-depth analysis of the exemptions claimed or the recent Tribunal case referred to above and instead asked the Commissioner to reach a decision.
13. On 25 September 2009 the CoL provided some additional information in relation to its application of section 40(2) of the Act to the withheld information.

Exemptions

14. The Commissioner will first consider the CoL's application of section 31(1)(d) of the Act to the withheld information. If it is found that some or all of the information is not covered by this exemption, he will then go on to consider sections 40(2) and 41(1).

Section 31(1)(d) – law enforcement

15. Section 31(1)(d) states that information is exempt under the Act if its disclosure would, or would be likely to, prejudice the assessment of any tax or duty or of any imposition of a similar nature.
16. In the Information Tribunal hearing of *Hogan v The Information Commissioner and Oxford City Council (EA/2005/0030)* ('Hogan') the tribunal stated that:

"The application of the 'prejudice test' should be considered as involving a number of steps. First, there is a need to identify the applicable interest(s) within the relevant exemption... Second, the nature of 'prejudice' being claimed must be considered... A third step for the decision-maker concerns the likelihood of occurrence of prejudice."
17. When considering the nature of the prejudice, the Tribunal stated in the hearing of Hogan that:

"An evidential burden rests with the decision maker to be able to show that some causal relationship exists between the potential disclosure and the prejudice and the prejudice is, as Lord Falconer of Thoroton has stated "real, actual or of substance" (Hansard HL (VOL. 162, April 20, 2000, col.827). If the public authority is unable to discharge this burden satisfactorily, reliance on 'prejudice' should be rejected."

18. As stated above in paragraph 16, the third step of the prejudice test is to consider the likelihood of occurrence of the prejudice claimed. The Commissioner notes that there are two limbs to this test; "would be likely to prejudice" and "would prejudice". The first limb of the test places a lesser evidential burden on the public authority to discharge. "Would be likely to prejudice" was considered in the Information Tribunal hearing of *John Connor Press Associates Limited v The Information Commissioner (EA/2005/0005)*. The Tribunal stated that:

"the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk".

19. The second limb of the test "would prejudice" places a much stronger evidential burden on the public authority to discharge. Whilst it would not be possible to prove that prejudice would occur beyond any doubt whatsoever, it is the Commissioner's view that prejudice must be at least more probable than not.
20. Once the prejudice test is satisfied, the Council needs to apply the public interest weighing up the arguments for and against disclosure.

The prejudice test

21. The CoL confirmed that it considers disclosure of the requested information would prejudice its assessment of tax, in this particular case the assessment of mandatory rate relief. In the alternative, it wishes to argue that disclosure would be likely to have this effect and that any prejudice would be real, significant and not a remote possibility. It presented the following arguments to support its position.
22. The CoL explained that disclosure of information provided in relation to any application for mandatory rate relief would affect the openness of future discussions with applicants and that this would prejudice its assessment of applications for mandatory rate relief. It stated that applicants consider that their tax matters are private and confidential and therefore COSREC would have a reasonable expectation that the

meeting held to discuss its application for tax relief and the information discussed within it would remain private.

23. The CoL confirmed that disclosure would result in applicants being reluctant to discuss their affairs openly, as they would have the fear that the information they provide could be disclosed at some time in the future. It explained that the CoL's decision making would be prejudiced if it received less than complete information from its applicants. If less or selective information is provided this would be likely to hinder the assessment process possibly leading to some applications being assessed incorrectly. The CoL stated that if taxes were incorrectly assessed the tax-paying public would be affected and applicants for mandatory rate relief would receive a windfall or be unfairly disadvantaged. It confirmed that it is particularly important to protect the way mandatory rate relief is assessed because it is of benefit to a number of charitable organisations.
24. The CoL argued that if the public became aware that tax was being incorrectly assessed due to a lack of openness on the part of applicants it would lose confidence in the tax system as a whole and this would lead to discontent and possibly to an increase in tax evasion.
25. In addition, the CoL confirmed that it is necessary for discussions as to tax liability to take place in private, so as to avoid any impression that third parties could use the information to influence the CoL's decision making. It stated that any such impression would prejudice the CoL's assessment of tax by reducing confidence in its decision making and thereby affecting the quality of information provided to it by applicants. CoL confirmed that because tax decisions are under regular review, this argument applies even after a decision has been taken because of the ongoing risk that disclosed information could be used by a third party to affect future decisions on tax liability. It stated that this is real, significant and not a remote possibility.
26. The Commissioner has carefully considered the arguments presented by CoL, the prejudice claimed and the likelihood of this occurring. He has concluded that neither of the thresholds has been satisfied in this case and he will now explain why.
27. He has first considered the process by which an application for mandatory rate relief is made. He notes that the CoL and other public authorities provide some guidance on their websites relating to rate relief for charities and non profit organisations. It is publicly known that charities and non profit organisations are entitled to 80% relief from business rates if they meet certain criteria. The CoL does not appear to publish its set of criteria but the Commissioner notes that

- other public authorities do. He notes that there is also a further facility for such organisations to apply for the remaining 20% to be waived.
28. The Commissioner accepts that for the majority of organisations it will be fairly obvious that they qualify for this type of tax relief. With the exception of special circumstances, organisations such as scouts and guides organisations, youth clubs, playgroups, village halls etc will more than likely qualify for 100% relief. For other organisations, however, a more detailed in depth assessment of individual circumstances and the organisation's set up will be required by the public authority they are applying to. COSREC falls into this category and the requested information is information which was obtained by the CoL during its detailed consideration of COSREC's application.
 29. He further notes that central government publicises the availability of this relief and actively encourages suitable organisations to apply for it. It is optional for an organisation to apply for relief and the benefits of applying for the relief are that it would not need to pay the rates and instead central government funds would cover them. There is a considerable incentive for organisations to apply for relief and the purpose of the relief is to encourage the thriving of organisations that have a benevolent rather than profit motive.
 30. Such relief enables important funds which are often already strained in such organisations to be directed to the specific cause they are set up to target. These organisations have a significant incentive to be open with the public authorities they are applying to and to provide whatever information is required to demonstrate that they meet the qualifying criteria. It is the Commissioner's view that this incentive will remain regardless of whether disclosure were ordered in this case. Such relief will continue to be beneficial to these organisations financially and for this reason they will continue to apply for such relief and supply the information that is required for the public authority to assess their application. He therefore does not accept that disclosure in this case would or would likely to lead to those organisations that usually qualify being less open in future applications or unwilling to share information with the CoL.
 31. The Commissioner does accept that there may be situations where an organisation may decide that it is more harmful to them to provide information necessary to support their claim than to miss out on the relief, for example, where the information is commercially sensitive. However, no such arguments have been made by the CoL in this case.
 32. The Commissioner does not accept that disclosure would or would be likely to affect the CoL's ability to assess tax relief or lead to possible

errors being made. As stated above, this argument followed on from the CoL's argument that disclosure would or would be likely to result in organisations being less open or less willing to provide information in the future to support their applications and the Commissioner was not convinced that disclosure would or would be likely to have such an effect. The content of the withheld information is key to any decision reached on the likelihood of prejudice. The requested information relates to the particular circumstances of the application for relief in this case. The Commissioner cannot see how the contents of the withheld information would or would be likely to have the distinct wider implications the CoL has claimed. The CoL has also stated itself that very few applications for mandatory rate relief are contentious and for the majority it is clear that the statutory criteria are met.

33. Turning now to the CoL's argument that tax matters are private and confidential, it is the Commissioner's view that it would be inappropriate to say that all tax affairs are private and confidential. The tax affairs of an individual are different to the tax affairs of a charity or organisation. The tax affairs of an individual are more likely to contain detailed and sensitive information about the personal circumstances of that individual than is the case here. The tax affairs of a charity or company are non-personal and the Commissioner is satisfied that the contents of the requested information in this case are not commercially sensitive to COSREC. The Commissioner accepts that a private individual would have some level of expectation that their tax affairs would remain private due to the personal nature of this type of information. However, he considers this argument is much weaker for information which relates to the tax affairs of a charity or organisation, as this type of information is non-personal. Even if the Commissioner were to accept that there was some level of expectation of confidence in relation to non-personal information remaining private, he is not satisfied that this argument is sufficient to meet either limb of the prejudice test in this case due to the fact that the contents of the requested information do not appear to be sensitive and there remain significant incentives to such organisations to apply for such relief.
34. The Commissioner also feels there is a distinction between tax affairs where there is a requirement to engage with a public authority and a voluntary application such as this where it is the organisation or charities decision whether to apply. He accepts that there are expectations of privacy in the first situation but feels that the expectations are much weaker in the second situation.
35. The CoL also argued that tax decisions are under regular review and that disclosed information could be used by a third party to affect future decisions on tax liability, possibly leading to an increase in tax

evasion. The Commissioner asked the CoL to expand on this argument and to provide any evidence it has to support its assertion that disclosure would lead to third party influences and an increase tax evasion. As stated in paragraph 12 above, the CoL provided no further arguments or information to support this view.

36. The Commissioner has considered the contents of the withheld information in this case and he does not agree that disclosure of this information would or would be likely to have these effects. He cannot see, based on the arguments and evidence provided by CoL, how the contents would or would be likely to be beneficial to a third party or how this information could be used by other organisations to their advantage. The CoL in fact later stated that third party influences are irrelevant to a decision to award mandatory rate relief, as relief is awarded if the statutory criteria are met. If third party input would have no effect on decision making, it then follows that it cannot be argued that there would or would be likely to be prejudice to the assessment or collection of tax.

Conclusion

37. In conclusion, the CoL has not provided sufficient arguments to demonstrate that either threshold of the prejudice test is satisfied in this case. The Commissioner is therefore satisfied that section 31(1)(d) of the Act is not engaged.
38. As the Commissioner has found that this exemption is not engaged there is no need for him to go on to consider the public interest test.
39. The Commissioner will now go on to consider the CoL's application of section 41 of the Act to the requested information.

Section 41 – information provided in confidence

40. Section 41(1) of the Act provides that information is exempt from disclosure if it was obtained by the CoL from any other person and the disclosure would constitute an actionable breach of confidence. The exemption is absolute and therefore not qualified by the public interest test set out in section 2 of the Act.

Was the information obtained from another person?

41. The CoL argued that the entire document should be regarded as information obtain from another person; in this case COSREC, as the information is the minutes of a meeting that took place to obtain further information from COSREC in order for CoL to assess its

application for mandatory rate relief. It stated that arguably four sentences within the document itself are the comments of two of the CoL's members of staff which attended the meeting and therefore do not constitute "information obtained from another person". However, it stated that 2 of these sentences either record the views of COSREC or are expressed in such a way that a reader could identify from the comments information obtained from COSREC. The remaining two are meaningless in isolation. For these reasons, the CoL argued that it was of the view that the entire document should be regarded as obtained from another person and therefore section 41 is engaged.

42. The Commissioner has carefully considered the contents of the requested information. He notes that the requested information is the minutes of a meeting that took place between COSREC and the CoL during which information and views were shared. It is the Commissioner's view that the very nature of this interaction demonstrates that the entire information cannot be said to be obtained from another person. The meeting was a two way process to discuss the application therefore any views or comments made by the CoL's attendees is not information obtained from another person.
43. For the four sentences identified by the CoL, as detailed in paragraph 41 above, the Commissioner has concluded that this information was not obtained from another person and therefore section 41 of the Act cannot apply.
44. For the remaining elements of this document, the Commissioner is satisfied that it is information obtained from another person. He will therefore now go on to consider whether disclosure of this part of the requested information would constitute an actionable breach of confidence.

Would disclosure constitute an actionable breach of confidence?

45. The Commissioner considers the test set out in *Coco v A N Clark (Engineers)* [1968] FSR 415 is the most appropriate test to apply in this case. This test states that a breach will be actionable if:
 - the information has the necessary quality of confidence;
 - the information was imparted in circumstances importing an obligation of confidence; and
 - there was an unauthorised use of the information to the detriment of the confider.
46. When considering the first element of the *Coco v Clark* test he must consider whether the information has the necessary quality of

confidence. Information will have the necessary quality of confidence if it is not otherwise accessible and if it is more than trivial. Information which is known only to a limited number of individuals will not be regarded as generally accessible although information that has been disseminated to the general public clearly will be. Information which was important to the confider cannot be considered to be trivial.

47. The Commissioner has considered the contents of the requested information. He is satisfied that the requested information is neither trivial nor in the public domain. He accepts that the information was provided by COSREC to support its application for mandatory rate relief in meeting which it regarded as confidential and as such the information itself was important to COSREC and private.
48. Concerning the second element of the test, an obligation of confidence can be expressed both explicitly and implicitly. The CoL argued that applications for tax relief are by their nature private and all tax payers have the general expectation that their tax affairs will remain private and confidential whether a private individual or a company or organisation. The CoL stated that it was clear to both it and COSREC that the meeting held to discuss its application for mandatory rate relief gave rise to a reasonable expectation of privacy.
49. The Commissioner has reviewed the requested information. It is his view that there is no evidence to suggest that any explicit obligation of confidence was given in this particular case and he notes that the information itself was not marked as being provided on condition that it was to be kept confidential. However, the Commissioner's accepts that given the custom and practice of the CoL in handling mandatory rate relief applications, in this particular case, the requested information was imparted in such a way which gave rise to an implied obligation of confidence.
50. It is now necessary to consider whether disclosure would cause any detriment to COSREC. The Commissioner considers that there is a distinction between information relating to an individual's personal and private life and information which is non-personal information. Following the Information Tribunal hearing of *Pauline Bluck v IC & Epsom & St Helier University NHS Trust, EA/2006/0090* it is the Commissioner's view that detriment is not a prerequisite of an actionable breach when information relating to an individual's personal and private life is being considered. This is because it can be argued in the alternative that the real consequence of disclosing personal and private information is the infringement of the confider's privacy.

51. However, the Commissioner does not agree that the same approach should be taken where non-personal information is concerned. In a more recent Information Tribunal hearing, *The Higher Education Funding Council for England v Guardian News & Media Ltd*, EA/2009/0036, it was stated that:

"...for the time being, this Tribunal, when dealing with the type of information in question in this Appeal [commercial confidence] should not depart from the line of authority from the higher courts leading from *Coco v Clark*" (paragraph 43).

The requested information in this case is non-personal information relating to COSREC. It is therefore the Commissioner's view that for disclosure to constitute a breach of confidence in this case there has to be a detrimental impact on the confider i.e. COSREC.

52. The arguments presented earlier in this Notice at paragraph 27 to 36 are of relevance here. The Commissioner considered that based on the contents of the requested information disclosure would not or would not be likely to have the implications described by CoL. As the Commissioner did not accept that any of the prejudices claimed would or would be likely to occur, it follows that he is not persuaded that disclosure would cause any detriment to the COSREC in this case.
53. As stated in paragraph 31 above, the Commissioner does accept that there may be cases where disclosure would be detrimental to the confider; for example where the requested information is commercially sensitive. However, in this case the CoL has not presented any arguments to the Commissioner, nor has he been able to determine any obvious reason for himself by viewing the withheld information, as to how the withheld information would cause any detriment to COSREC, if it were released.
54. As the Commissioner is not satisfied that the third element of the *Coco v Clark* test is satisfied in this case he has concluded that section 41 of the Act does not apply to the requested information.

Section 40 – personal data

55. The Commissioner will now go on to consider the CoL's application of section 40(2) of the Act. He wishes to highlight at this point that this exemption has only been applied the names of those individuals that attended the meeting. Six individuals attended the meeting; these can be categorised as follows:

- (a) the COSREC's legal representative;
 - (b) a named Scientologist representing COSREC;
 - (c) four employees of the CoL.
56. The CoL confirmed in its correspondence dated 9 March 2010 to the Commissioner that it only wishes to rely on section 40(2) of the Act for (a) and (b) listed above and for one of the four CoL employees referred to in (c), who is considered to be a junior member of staff.
57. The Commissioner will therefore now consider the application of section 40(2) of the Act to these three attendees.
58. Section 40(2) of the Act states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the Act would breach any of the data protection principles or section 10 of the Data Protection Act 1998.
59. The CoL argued that the names of these attendees and the reason why they attended this meeting; whether a CoL employee or a representative of COSREC or a Scientologist; is personal data and that disclosure of this information under the Act would breach the first data protection principle as outlined in the Data Protection Act 1998 ('the DPA').
60. Firstly, the Commissioner must consider whether the requested information is personal data. Personal data is defined in Section 1 of the DPA as follows:
- ""personal data" means 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 intentions of the data controller or any other person in respect of the individual."
61. It is the Commissioner's view that the name of the three attendees to which section 40(2) of the Act has been applied is quite obviously personal data. The Commissioner is also satisfied that the name of an individual's employer or the fact that they are representing a particular organisation is personal data about those individuals.

62. As the Commissioner is satisfied that the names of the three attendees and the reason why they attended is personal data, it is now necessary to go on to establish whether disclosure under the Act would breach the first data protection principle, as the CoL has claimed.
63. The first data protection principle states that:
- “Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless -
- (a) at least one of the conditions in schedule 2 is met, and
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.”
64. The Commissioner will address each of the three attendees in turn and will first consider whether disclosure would be fair and lawful. He will refer to each as (a), (b) and (c) as described in paragraph 56 above.

Attendee (a)

65. The CoL argued that COSREC’s legal representative would have had a reasonable expectation that their name and the fact that they represented the COSREC at this meeting would not be released into the public domain. It stated that this is evidenced by the fact that the COREC has repeatedly objected to disclosure by the CoL of any information relating to its application for mandatory rate relief. CoL argued that due to this expectation, disclosure of this information would be unfair on the individual concerned.
66. The CoL also argued that given the controversial nature of COSREC, disclosure of the name of the COSREC’s legal representative could significantly and negatively impact on the life of this individual.
67. From a simple internet search of the named individual the Commissioner has found various internet sites and publications which openly disclose this individual and his connection to the COSREC. The Commissioner is therefore of the view that as this information is already widely in the public domain, it would not be unfair to the individual concerned if disclosure of his name and the fact that he is the COSREC’s legal representative were ordered in this case.

Attendee (b)

68. The CoL presented the same arguments for attendee (b) as outlined in paragraphs 65 to 67 above for attendee (a).

69. Again, the Commissioner has undertaken a simple internet search of this individual and has found one particular publication from 2007 where his name and the fact that he is connected with the COSREC are openly mentioned. In this particular publication, this individual has provided specific quotes to the matter being discussed. It is the Commissioner's view that as this attendee's name and the fact that he is connected with the COSREC is already in the public domain, disclosure in this case would not be unfair.

Attendee (c)

70. As stated in paragraph 55 above, attendee (c) is an employee of the CoL. In addition to providing arguments to support its application of section 40(2) of the Act to the disclosure of the name of this employee, the CoL provided the Commissioner with copies of its Staff Data Protection Policy and its Freedom of Information Policy – Managing Access to Personal Information. It also provided a copy of its internal grading structure and confirmed the job title of this employee and their grade at the time of the request.
71. The CoL explained that it is its current policy to only disclose the names of Divisional Heads within the organisation and the names of those employees with public facing roles on request. The names of any employee below this threshold or in a role that is not public facing would be withheld under this exemption. It argued that attendee (c) held a position at grade f in its current structure (the structure has grade a – j, j being the most senior of grades), which it considers to be of junior status. The CoL stated that as this employee held a junior role below the threshold of Divisional Head and was not in a public facing role, they hold a reasonable expectation that their name and the fact that they are employed by the CoL would not be released into the public domain. It confirmed that as this employee has no general expectation that their name would be disclosed following requests for information, disclosure in this case would be unfair and therefore in breach of the first data protection principle.
72. The CoL argued that the COSREC is controversial and therefore disclosure of the names of individual employees who have been involved in the decision to award mandatory rate relief, albeit indirectly in this particular case, has the potential to impact on their lives. It therefore considers that there are strong grounds in this case to protect the privacy of attendee (c), particularly as they hold a junior position.
73. The Commissioner has considered the seniority of the employee in question in this case and compared the CoL's policy on disclosure of

employee details and its grading structure to his own policy and organisational structure. It is his view that in this particular case, the CoL has set the threshold of seniority too high.

74. It is generally accepted that remuneration increases with seniority and it is the Commissioner's view that staff of seniority are subject to further public scrutiny and accountability when compared to less senior members of staff. At the time of the request attendee (c) held a position at grade f; a grade just above midgrade within the CoL structure. According to the salary scales provided by the CoL, an employee with a role at level f will receive a salary between £36,590 and £43,730 (excluding any London weighting they are entitled to) per annum.
75. For remuneration of this level, which is well above the average for the public sector, the Commissioner would expect the role to have a reasonable level of seniority and accountability. By way of comparison, it is the Commissioner's policy to release the names of those staff in his own structure from level D above. A level D position attracts an annual salary between £22,330 and £30,211 (pay ranges for 09/10) per annum. It is the Commissioner's view that a Level D position within his own structure either involves some level of managerial responsibility and therefore seniority over other members of staff or a role that involves decision making for which the employee has accountability.
76. Given the level of remuneration attendee (c) receives from CoL, the Commissioner is of the view that attendee (c) does not hold a junior position as the CoL has claimed. He considers attendee (c) holds a position of sufficient seniority to warrant the further transparency and public scrutiny such roles attract even where the involvement in the particular decision making is limited or indirect.
77. Although attendee (c) may have an expectation that their name will not be released in response to information requests due to the policy the CoL has in place, the Commissioner considers this expectation to be unreasonable based on their remuneration and the level of seniority such a salary attracts within the public sector.
78. In other cases he has considered the Commissioner has drawn a distinction between information which relates to an employee acting in an official capacity and information which relates to their private life; the latter clearly requiring more privacy and protection. In this case, the requested information is the name of a CoL employee who attended a meeting with COSREC during which COSREC's application for mandatory rate relief was discussed. The requested information

clearly relates to attendee (c) acting in an official or work capacity; it is not information which relates to their private life.

79. The Commissioner accepts that the COSREC is controversial. However, he cannot accept that disclosure in this case could possibly impact on the life of attendee (c); the CoL has produced no evidence to demonstrate that this would occur or to suggest that this is even a small possibility. The CoL has confirmed itself that attendee (c) was indirectly involved in the decision taken to grant relief and disclosure, if ordered in this case, would only reveal that attendee (c) attended a meeting to gather information about COSREC application prior to any firm decision being reached. Despite the fact that disclosure would result in a limited amount of information about attendee (c) becoming available, the Commissioner nevertheless considers that there is an interest in the additional transparency and openness that this would bring.
80. In conclusion, it is the Commissioner's view that it would not be unfair to release the name of attendee (c) in response to this request.
81. As the Commissioner considers, in this particular case, that it would not be unfair to disclose the names of attendees (a), (b) (c) in response to this request and knows of no reason why such disclosure would be unlawful, it is now necessary for him to consider whether any of the conditions in Schedule 2 of the DPA can be met.
82. Condition 6 is the only condition that can apply in these circumstances. This states that personal data can be disclosed if:
- "The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject."
83. The Commissioner considers that there is a significant legitimate public interest in obtaining information about the process that led to COSREC being granted mandatory rate relief to enable the public to better understand how this organisation qualified for this form of tax relief. Particularly as the COSREC is controversial, there is significant public concern about the relief being awarded to this organisation, the amounts involved are substantial and the cost of mandatory rate relief is met by the public purse.
84. Although dealing with the application of other exemptions, the Commissioner notes that the Information Tribunal made some strong

and compelling arguments in favour of disclosure of any information which is not legally professionally privileged that would assist the public in understanding more clearly why relief was awarded to COSREC in the case of *Mr William Thackeray v Information Commissioner and The Common Council of the City of London (EA/2009/00958)*. At paragraph 46, the Tribunal stated:

“ In its view the case for disclosure was likely to be stronger in relation to material that was legally professionally privileged given the significant public interests that arise in this case”.

The Tribunal then went on to say:

“The Tribunal wished to recommend to the Council that it reconsider its position in light of this Tribunal assessment of the public interests in favour of disclosure.”

85. It is the Commissioner’s view that the legitimate interests of the complainant and the public as a whole regarding transparency and accountability are sufficient to warrant the disclosure of the identities of the three attendees in this case. As stated in paragraphs 67 and 69 above, the names of attendee (a) and (b) and their connection to the COSREC are already in the public domain. He therefore does not accept that the disclosure of these names in this case would prejudice the rights and freedoms of these individuals.
86. In respect of attendee (c), as explained above, the Commissioner is not convinced that disclosure in this case would prejudice the rights and freedoms of this individual or constitute an unwarranted intrusion into the public role of this employee. The CoL confirmed itself that attendee (c) was only indirectly involved in the overall decision to grant COSREC rate relief. Disclosure in this case would confirm that attendee (c) was part of a meeting that took place with COSREC to gather further information about its application. The decision to grant relief was taken afterwards; disclosure therefore provides no indication of which employee(s) made the overall decision. He therefore does not accept that this employee would be specifically targeted by those campaigning against the COSREC. Attendee (c) also holds a position within the CoL of sufficient seniority to warrant the accountability and transparency even of their limited involvement that disclosure would provide in this case.
87. In conclusion, it is the Commissioner’s view that disclosure of the names of the three attendees in this case would be fair and condition 6 of Schedule 2 of the DPA is met in this case. For these reasons, he is satisfied that section 40(2) of the Act is not engaged.

The Decision

88. The Commissioner's decision is that the CoL did not deal with the following aspects of the request for information in accordance with the Act:
- it incorrectly relied upon section 31(1)(d) of the Act for the non disclosure of the requested information;
 - it incorrectly relied upon section 41 of the Act for the non disclosure of the requested information;
 - it incorrectly relied upon section 40(2) of the Act for the non disclosure of the names of three individuals referred to in the withheld information.

Steps Required

89. The Commissioner requires the CoL to take the following steps to ensure compliance with the Act:
- the CoL should disclose the requested information, in its entirety, to the complainant.
90. The CoL must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

91. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

92. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 5th day of October 2010

Signed

**Jo Pedder
Group Manager**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 31(1)

Provides that –

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment.”

Section 40(1)

Provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

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."

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, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded."

Section 40(4)

Provides that –

"The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data)."

Section 41(1)

provides that –

"Information is exempt information if-

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person."