

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 19 September 2011

**Public Authority:** East Riding of Yorkshire Council  
**Address:** County Hall  
Cross Street  
Beverley  
East Riding of Yorkshire  
HU17 9BA

### Summary

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The complainant requested details of senior council officer salaries and associated information for officers working at the council who earned in excess of £100 000 for the years 2008-9 and 2009-10. The council initially refused the request on the basis the section 40(2) of the Act applied. During the Commissioner's investigation the council provided some summary and some redacted information, and also disclosed some of the withheld information to the complainant in an effort to resolve the complaint informally. However the complainant asked the Commissioner to continue and make a decision on the remaining withheld information. The Commissioner's decision is that the council's initial response was a breach of section 10(1) of the Act and section 1(1)(b) of the Act however the Commissioner is satisfied that the council's subsequent disclosure disclosed all of the information which the complainant's was entitled to. He has therefore decided that he does not need to order the council to take any further steps to comply with its obligations under the Act in this Notice.

## The Commissioner's Role

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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.

## Background

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2. The Commissioner is aware there have been various press reports about members of East Riding of Yorkshire Council's management team who received a significant salary rise in 2009 some of whom then took early retirement in the following financial year.
3. The council argues that the salary rises were introduced as the result of a review carried out by an independent third party organisation, Solace, which carried out a benchmarking exercise and argued that salary rises were appropriate for officers at the council.

## The Request

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4. The complainant made a request to the council for:

*"I wish to be supplied in hard copy form, all recorded information, E-mails, Council meeting minutes, research and reports held by you in whatsoever files concerning the annual gross remuneration paid by the East Riding of Yorkshire Council to all officers whose gross emoluments exceed £100 000 per annum.*

*The information will include all benefits, including pension payment provisions, car and travel allowances, expense and entertainment allowances."*

He subsequently refined his request to cover the years 2008/2009 and 2009/10.

5. The Commissioner does not have a copy of the actual request which the complainant made, and so does not know with certainty the date on which it was made. He is however able to make a decision as whether the council's response was compliant with section 10(1) of the Act because the council's letter of 8 June 2010 stated that it had calculated that 6 July 2010 was the 20<sup>th</sup> working day following the day

it received the request. The council's actual response was not sent until 10 August 2011. Clearly therefore the council failed to meet its obligations in this respect.

6. The council's response on 8 June 2010 also restated the request it had received, and so the Commissioner knows with certainty the request which the complainant made for the purposes of his decision on this complaint.
7. In its response of 10 August 2010 the council provided the complainant with some of the information he requested. It provided him with a list detailing the number of officers who earned over £50000 in bands of £5000. Officers were not named or identified in the list; it simply provided the number of council officers whose earnings fell within the relevant bands.
8. The council stated that none of the posts listed were in receipt of any entertainment expenses or travel allowances but added that all council officers were able to claim reimbursements for expenditure which they had incurred on the councils behalf such as rail travel, subsistence and mileage.
9. Further to this the council disclosed further information for members of the Corporate Management team. This information identified officers by name and provided direct information on their salaries.
10. The council further confirmed that minutes of the meetings of the council, the cabinet and other committees including the staff terms and conditions committee were available to inspect on the councils website at [www.eastriding.gov.uk](http://www.eastriding.gov.uk).
11. However the council withheld some information. It described the withheld information as
  - Pension payment provisions as set out in reports to the cabinet (2 March 2009, 8 March 2010 and 13 April 2010) and corporate issues overview and scrutiny Committee (25 March 2010).
  - Any individuals pension payments
  - Salary information relating to 2008/09 beyond that provided on the sheets it had disclosed to the complainant.
  - It also withheld the report from Solace.
12. It informed the complainant that it had withheld this information on the basis that the exemption in section 40(2) of the Act applied.

13. On 16 August 2010 the complainant asked the council to review its decision. It replied on 18 November 2010, finding that the remaining withheld information should still be withheld for the same reasons.

## **The Investigation**

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### **Scope of the case**

14. Following an earlier complaint about not receiving a response to his request on 10 July 2010, the complainant made a further complaint about the council's response to his request on 22 November 2010 about the decision the council had reached.
15. The Commissioner has considered other specific requests for information relating to some individuals at the council from this complainant. Although there is some crossover of the information which is caught by the requests he has dealt with information falling within the scope of the other request in his Decision Notice FS50357986. He has not therefore considered this information again within this decision notice. The request in this case is a wider and more generic request for information, covering information on many more individual's salaries.

### **Chronology**

16. The Commissioner wrote to the council on 20 May 2011. He asked it to consider whether its disclosure was in accordance with the guidance he has published regarding the disclosure of salaries under the Act provided at [www.ico.gov.uk](http://www.ico.gov.uk). In particular he noted that the council had provided less information for the 2008/09 year on because it said that the Accounting Regulations did not require it to do so. Regulation 4 of the Accounts and Audit (Amendment No.2) (England) Regulations 2009 [SI 2009 No. 3322) introduced a legal requirement for reporting remuneration of senior employees to increase transparency and accountability in Local Government.
17. The Commissioner highlighted that the requirements of the Accounting Regulations do not provide an exemption to a request for information under the Act, and asked the council to reconsider its position given this clarification.
18. The council responded on 14 June 2011. It had reconsidered its approach and had decided that further information could be disclosed as a result. The Commissioner wrote back to the council on 17 June 2011 asking it whether it could disclose a copy of the report from

Solace. He also asked it to clarify certain aspects of the intended disclosure.

19. The council responded to the Commissioner on 24 June 2011. It had decided that it could disclose a table of all officers who earned in excess of £100 000, detailing information in terms of name, post, salary within £5000 bands, mileage, car allowance and other expenses and entertainment allowances. It also confirmed that it would disclose a copy of the report from Solace if Solace did not indicate that it did not wish this to be disclosed. The council subsequently disclosed this information to the complainant on 13 July 2011 with a view to seeking an informal resolution to the complaint.
20. The Commissioner then wrote to the complainant asking if he was satisfied with the additional disclosure and wished to withdraw his complaint. The complainant responded on 18 July 2011 indicating that he still wished the Commissioner to issue a Decision Notice on the case. He raised a number of questions which he considered that the council would need to answer in order to fully respond to his request.
21. The Commissioner asked the council to consider these further questions and to identify whether any of the requested information fell within the scope of the initial request, was held by the council, but had not been provided to the complainant.
22. The council's response stated that some of the new questions did not fall within the scope of the initial request and/or were questions which arose as a result of the information which the council disclosed when seeking to informally resolve the request, i.e. that they were subsequent to the initial disclosure and seeking to widen the initial request further. They would not be considered to fall directly within the scope of the initial request.
23. The additional requests were clarified in the following way by the council:
  - The complainant asked the council to name officers rather than members who attended a meeting on 17 October 2010. The council clarified to the Commissioner that no record is made of officers who attend meetings in such circumstances. The record is purely the minutes as recorded.
  - The complainant also asked the council for a copy of minutes which fell outside of the scope of his initial request. He had initially narrowed his request to information relating to 2008/9 and 2009/10 and the minutes which he requested were dated outside of that period. The council confirmed in any event that that information was available for public inspection and copies

could be obtained from its archive service by telephone or by email.

- The complainant also asked the council whether the exclusion of the public it had carried out in respect of a meeting under Paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972 was a correct interpretation of the Act and its amendments. The Commissioner notes however that this is a separate and different request to that which he is investigating and has not therefore considered this further within this Notice.
- The complainant asked the council to confirm how many advisors opinions were sought relating to the events, the names of advisors and which organisations they represented. The council's informed the Commissioner that this information is held in the SOLACE report which it disclosed to the complainant on 13 July 2011.

## Analysis

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### Exemptions

#### Section 40(2)

24. Section 40(2) excludes the personal data of third parties from disclosure if disclosing it would breach one of the data protection principles of the DPA.
25. The Commissioner therefore firstly needs to decide whether the information is personal data, and if so whether a disclosure of that information breaches any of the data protection principles.

#### Is the information personal data?

26. Section 1(1) of the Data Protection Act 1998 (the DPA) provides the following definition of personal data:

*"'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."*

27. This provides two criteria that must be fulfilled for information to constitute personal data; the information must relate to an individual,

and that individual must be identifiable either from that information directly, or from that information combined with other information available to the holder of that information.

28. After considering the withheld information the Commissioner is satisfied that as the information relates to specified individuals and concerns their individual remuneration packages. The information is therefore 'personal data' according to the definition given in section 1(1) of the DPA.
29. The Commissioner must therefore decide whether a disclosure of the information would breach one of the data protection principles. In this case the relevant principle is the first data protection principle, which requires information to be processed fairly and lawfully, and in accordance with one of the purposes provided in schedule 2 of the Act.

#### The first data protection principle?

30. The first data protection principle requires that personal information should be processed "fairly". In order for a disclosure of this information to be fair, an important factor to consider is whether Senior Officers had a reasonable expectation that information on their information would be disclosed by their employer to any member of the public at the time that they first provided it to the Council. This might be because the Council told them that that would occur or because it would have been reasonable for them to understand this was a possibility at the time that they provided it. Alternatively another reason might apply which would make that disclosure fair, taking into account all of the circumstances at the time that the request was received.
31. The Commissioner has previously published guidance on whether the disclosure of salary levels would be fair and lawful for the purposes of the first data protection principle at [http://www.ico.gov.uk/~media/documents/library/Freedom\\_of\\_Information/Practical\\_application/SALARY\\_DISCLOSURE.ashx](http://www.ico.gov.uk/~media/documents/library/Freedom_of_Information/Practical_application/SALARY_DISCLOSURE.ashx).
32. The guidance states that there is no single rule which can be applied in every case, however, the following guidelines are useful:
  - Salary scales should usually be published as a matter of routine.
  - Disclosure should only be to the extent necessary to fulfil a legitimate public interest. This may involve narrowing down advertised scales, for example to the nearest £5000. Only in

exceptional circumstances is disclosure of exact salaries likely to be justified.

- Senior staff who are responsible for major policy and financial initiatives can expect greater scrutiny of their pay than more junior employees. It will nearly always be unfair to disclose the exact salaries of junior employees.
- There could be factors that weigh in favour of greater disclosure, such as legitimate concerns about corruption or mismanagement, or situations in which senior staff set their own or others' pay.

33. The Commissioner considers that the test of fairness in such circumstances takes into account a number of factors such as the seniority of their role and whether their role is public facing or not. The seniority of an officer is an important factor in colouring their expectations as to the degree of information about them which may need to be disclosed in response to a request. The Commissioner considers senior officers should have a greater expectation that some information about them may need to be disclosed because this is necessary for the council to be transparent and accountable for its actions and how it spends public money. Junior officers will have a lesser expectation that information about them will need to be disclosed in order for the council to be transparent and accountable.
34. The Commissioner notes that the authority initially disclosed information which provided details of officers salaries where they exceeded £50 000. They disclosed this information in the form of salary bands of £5000, detailing the number of officer at each bands of £5000. Individual officers were not named and were not identifiable as their roles in the authority were also not identified.
35. The Commissioner does not consider that a disclosure of the information in this form met with the first part of the complainant's request. It does meet with a requirement that salary bands should be disclosed, however it is clear from the complainant's request that he was asking for more detailed information about the remuneration packages of individuals earning over £100 000. Individuals were not identified by the disclosure and so the Commissioner considers that the response did not meet that part of the request.
36. The council did however provide further details for the Chief Executive and for members of the Management Board. Their job title was provided (and so the individuals would be identifiable), their salary



rounded to the nearest £1000 and also details of their allowances were disclosed.

37. The Commissioner recognises in his guidance that salary levels are not the determining issue as to whether information should be disclosed, however it is clear in this situation that those earning in excess of £100, 000 at the council are relatively senior figures within the council. Due to this seniority they would be responsible for major policy decisions or for the expenditure of public funds.
38. The Commissioner is satisfied that officers who fall within the scope of the request would have had some expectation that due to the seniority of their posts some details of their role and their salary levels could be disclosed in response to a request for information. This is due to the requirements for public authorities to be transparent and accountable for their use of public money. Details such as a senior officer's role and the salary they are paid highlight the extent to which larger salaries are paid within the council and are necessary to demonstrate that the roles which attract a salary of that size are appropriate.
39. Similarly, at that level of seniority their name would be likely to be common knowledge as they would have responsibilities which would require a public facing role, and/or a role which attracted a level of direct accountability for the task they carry out.
40. The Commissioner considers that disclosing an individual's name and their job title, together with their position within a salary band of £5000 would fall within the legitimate interest of the general public when they are seeking to scrutinise the council's use of public funds on salaries. He also considers that officers earning in excess of £100 000 would have some recognition that information of this sort may need to be disclosed in response to a request given the increased levels of public and political interest in the pay awarded to senior civil servants during this period of austerity. This was partially the reason for the introduction of the accounting regulations in the first instance. There have also been calls by senior politicians for greater transparency on senior civil servants salary levels in order to increase public trust and allow greater public scrutiny of how public money is spent. Considered together this would have created an understanding amongst senior council employees that some details of their salaries would need to be disclosed in response to a request.
41. He also considers that the press reports and the Tax Alliance statements regarding the previous actions of the council in respect of the early retirement of a number of its officers would raise public

concerns and would provide a legitimate interest in the public being able to properly scrutinise the council's salary commitments.

42. The Commissioner therefore considers that Officers falling within the scope of the request would have an expectation that they would be identified by name, that their role within the council and that details of their salary within £5000 bands would be disclosed.
43. The Commissioner notes that the subsequent disclosure by the council meets with the Commissioner's considerations in that it does disclose information on salaries of the individual officers within bands of £5000. He is satisfied however that the initial disclosure by the council did not do so. The council therefore incorrectly applied section 40(2) to this particular information.

Would any damage or distress be caused by the disclosure of specific salaries?

44. The Commissioner has considered whether there are any legitimate concerns that a disclosure of the information might cause damage or distress to the individuals concerned. The council did not provide any specific arguments in that respect, and so he must consider the general argument that a disclosure of personal information such as salaries would cause a degree of distress to the individuals involved.
45. The Commissioner considers that there must be a degree of balance between transparency on the authority's behalf, and on the rights of individuals to keep details of their salary private and in this instance he is satisfied that a disclosure of salaries within £5000 bands meets and balances both of these requirements .

Further information in respect of those individuals

46. The Commissioner notes that the council withheld other information in relation to officer's pension and salaries. The withheld information includes reports and correspondence detailing the appointment of the individuals and the salary which they will receive, details regarding annual salary rises, and other details about pensions and retirement considerations. It includes details of requests for early retirement by some individuals.
47. He has considered the application of the exemption to offers of employment, or letters to officers detailing awards or changes to individual salaries. He considers that a disclosure of this information would not fall within the usual expectations of the individuals involved. He further considers that such a disclosure is unnecessary and would be an unwarranted intrusion into the private details of the individual's

employment at the council given the other details which have been disclosed.

48. In the absence of a 'tipping factor' which would weigh more heavily towards disclosure he considers that individuals would have no expectation that such information would be disclosed in response to a request. A tipping factor would be likely to be specific to an individual and might, for instance weigh more heavily towards a disclosure of the information in order that the council can demonstrate the integrity of a decision it has taken where there are serious concerns about a specific salary award. Alternatively it might aid an individual show the truth behind a decision where incorrect allegations are being publicly made against him or her in some way.
49. There has been general criticism relating to the council about some senior officers pay awards in the press. However the Commissioner considers that there are no overriding factors in this case which would require the information to be disclosed bearing in mind the decision to disclose the Solace Report and the associated minutes which led to officers' salaries being raised.
50. The Commissioner therefore considers that in light of the disclosure of the report and the minutes, a disclosure of the letters detailing salary rises would not be necessary for the purposes of providing greater public transparency where details of the salary have already been provided. They would not create a greater degree of transparency on the spending of public money.
51. The Commissioner considers that the details of pension's payments made to individuals are generally more intrusive into the privacy of the individuals concerned. The public purse is only partly responsible for the final cost of the pensions which are provided to members of the scheme. An individual is therefore less likely to have an expectation that information detailing such payments would be disclosed to the general public.
52. The Commissioner has dealt with some of the specific requests for information on pension's payments and awards made to specific senior officers at the council in his Decision Notices FS50357986 and FS50318078. In these cases some background information on reports relating to strain costs on the authority were ordered disclosed and in the latter case further information was disclosed on the basis that information was already in the public domain relating to this.
53. In this case the complainant has specifically requested details of payments made to officers, which would not cover background information of payments made to the pension funds to cover strain

costs of an early retirement. There are a small number of letters referring to individuals who have requested early retirement within the information which has been withheld.

54. The Commissioner is satisfied that without more specific, overriding factors tipping the balance of legitimate interests towards disclosure that it would not be fair to disclose information of this sort.
55. The Commissioner's decision is that the council was therefore correct to apply section 40(2) to this information.

#### Solace Enterprises Report and associated council minutes

56. Solace Enterprises Report is the basis upon which the senior members of the council's salaries were uplifted. The council based its decisions on the individual salaries of its senior posts on the findings in the report and hence the disclosure of this document would provide a very good overview of the reasons why council salaries were set at the level they currently stand. The Commissioner notes that a significant number of senior officers received a substantial pay rise based on the outcome of this review.
57. The Council initially refused to disclose the information to the complainant, however after consultation with the Commissioner it provided him with a full copy of the report and the council minutes in which the report was considered in order to seek a resolution of the complaint. The complainant did not raise issues with this part of the disclosure in his letter of 18 July 2011 and so the Commissioner has not considered this further.

#### **Procedural Requirements**

58. In paragraphs 4 and 5 above the Commissioner refers to the fact that he was not provided with a copy of the original request by the complainant. He therefore has no specific evidence of the date when the request was received. However the Commissioner notes that the council provided the complainant with an acknowledgement in which the council stated that it had calculated that it needed to respond by 6 July 2011 in order to comply with the time deadlines for responding under section 10 (1) of the Act. The council did not however provide its response until 10 August 2011. The Commissioner therefore considers that the council breached section 10(1) in failing to respond to the complainant within the statutory deadline for response.
59. The Commissioner notes that the council also applied exemptions to information which it subsequently disclosed to the complainant, but which in the Commissioner's view should have been disclosed in response to the request. The Commissioner therefore considers that

the council breached section 1(1)(b) in failing to provide this information to him in response to his request.

## **The Decision**

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60. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

- The council correctly withheld pensions and salary information under section 40(2) of the Act.
- The council's informal disclosure met with its obligations under section 40(2) of the Act.

61. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- The council's initial response incorrectly withheld details of salary levels in that it should have provided information on individuals' salaries, identifying the individuals concerned, to within £5000 bands. This is a breach of section 1(1)(b) of the Act.
- The council breached section 10(1) of the Act in that it did not provide the information highlighted above to the complainant within 20 working days.

## **Steps Required**

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62. The Commissioner requires no steps to be taken.

## Right of Appeal

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63. 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: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

64. 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.

65. 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 19<sup>th</sup> day of September 2011**

**Signed .....**

**Andrew White  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Legal Annex

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### General Right of Access

#### **Section 1(1) provides that -**

"Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him."

#### **Section 2(3) provides that –**

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
  - (i) subsection (1), and
  - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
  - (iii) section 41, and
  - (iv) section 44"

## **Personal information.**

### **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-

- (c) 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-
  - 1. any of the data protection principles, or
  - 2. section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (d) 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).”