

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 13 January 2015

**Public Authority:** Newham Council  
**Address:** Newham Dockside  
1000 Dockside Road  
London  
E16 2QU

#### **Decision (including any steps ordered)**

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1. The complainant has requested from Newham Council the total amount it has deducted from its elected councillors' basic and where applicable special responsibility allowances and passed to funds/accounts controlled by the mayor, the Labour Group or the Labour Party between 6 April 2010 and 5 April 2014.
2. Newham Council has withheld the requested information under section 40(2) of the FOIA on the basis that it is personal data the disclosure of which would be unlawful and unfair under the Data Protection Act 1998.
3. The Commissioner's decision is that Newham Council has failed to engage section 40(2) of the FOIA.
4. The Commissioner requires Newham Council to take the following steps to ensure compliance with the legislation.
  - Disclose the information withheld under section 40(2).
5. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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6. On 24 June 2014 the complainant wrote to Newham Council (the council) and requested information in the following terms:

*'Deductions from Elected Members Allowances.*

*Between 6 April 2010 and 5 April 2014, how much, in total, has been deducted (by the Council) from the Basic Allowances paid to elected members of Newham Council and passed to funds/ accounts controlled by the Labour Group or the Labour Party?*

*Between 6 April 2010 and 5 April 2014, how much, in total, has been deducted (by the Council) from the Special Responsibility Allowances paid to elected members of Newham Council and passed to funds/ accounts controlled by the Mayor, the Labour Group or the Labour Party?'*

7. The council responded on 18 August 2014. It stated that it was withholding the requested information under section 40(2) of the FOIA on the basis that the retrieval and collation of this information from the allowance records of both current and former Councillors would be to process the personal records held of those individuals for a purpose other than for which it was originally collected and subsequently held.
8. On 21 August 2014 the complainant requested an internal review stating that the council already published the allowances paid to its elected councillors so it was difficult to see why section 40 applied.
9. Following an internal review the council wrote to the complainant on 16 September 2014 and stated it was upholding its original decision on the basis that what councillors chose to contribute from their published allowances was their personal information.

## Background

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10. The council pays all of its elected members a basic allowance<sup>1</sup> (which is the same for everyone) and some of its members a special responsibility allowance (which varies).
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<sup>1</sup> £10,743 for members serving from 1 April 2013 to 31 March 2014

11. The council publishes the basic and special responsibility allowances paid to its named elected councillors on an annual basis on its website<sup>2</sup> as it is required to do by legislation. This information is currently available online for the years from 2009 to 2014.
12. For those Labour councillors who request it, the council offers a service (for which it charges a fee) whereby it makes a deduction from their basic and if applicable, special responsibility allowances and pays it to the funds/accounts controlled by the Mayor, the Labour Group or the Labour Party.

### **Scope of the case**

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13. On 27 October 2014 the complainant contacted the Commissioner to complain about the way his request for information had been handled by the council. In particular, he suggested that the exemption under section 40(2) of the FOIA was not applicable as he was requesting a 'global figure' over a 4 year period and not the specific contributions made by individual councillors.

### **Chronology**

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14. On 17 November 2014 the Commissioner contacted the council and requested a copy of the requested information together with its further comments and arguments as to why it believed that this information was exempt from disclosure under section 40(2) of the FOIA.
15. The council responded on 21 November 2014 with a copy of the requested information together with its further arguments as to why it believed section 40(2) of the FOIA was engaged.

### **Reasons for decision**

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16. The council has applied the exemption under sections 40(2) of the FOIA to withhold the requested information on the basis that it is
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<sup>2</sup> <http://www.newham.gov.uk/Pages/Services/Councillors-allowances-and-expenses.aspx>

personal data the disclosure of which would be unfair. The Commissioner will now deal with the application of this exemption.

## **Section 40(2) of the FOIA**

17. Under section 40(2) by virtue of section 40(3)(a)(i), personal data of a third party can be withheld if it would breach any of the data protection principles to disclose it.
18. Personal data is defined in section 1(1) of the Data Protection Act (DPA) as:

“data which relate to a living individual who can be identified –

  - (i) from those data, or
  - (ii) 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 intention of the data controller or any other person in respect of the individual.”
11. The two main elements of personal data are that the information must ‘relate’ to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way.
12. In this case the information requested is two global figures. The first for the amount deducted by the council from its councillors’ basic allowances from 6 April 2010 and 5 April 2014 and passed to funds/accounts controlled by the Labour Group or Labour Party. The second for amount deducted by the council from its councillors’ special responsibility allowances from 6 April 2010 and 5 April 2014 and passed to funds/accounts controlled by the Mayor, the Labour Group or Labour Party.
19. The council has argued that as the basic and special responsibility allowances paid to individual councillors from 2010 to 2014 are published on its website, disclosure of the requested information would make it possible to work out ‘a rough estimate’ of the contributions made by individuals. The council stated that this would involve taking each allowance in turn and then adding it up for the four year period for all councillors. The figure produced could be compared against the total contributions deducted by the council for the particular allowance to arrive at a percentage figure. This percentage could then be applied against the total allowances received by a particular councillor for the four year period to arrive at a rough estimate as to the contributions

deducted by the council. The council accepted that this rough estimate was subject to a number of unknown factors; the identity of the councillors that agreed to make a contribution, whether this contribution was deducted by the council or paid directly by the councillor concerned, the years for which the contribution was deducted by the council and the amount agreed.

20. The Commissioner accepts that the requested information relates to councillors as a group as it represents the contributions they have agreed for the council to deduct from their basic and where appropriate special responsibility allowance and pass on to funds/accounts controlled by the Mayor, the Labour Group or the Labour Party. However, the Commissioner does not accept that it is possible to identify whether and if so how much, a particular councillor has agreed for the council to deduct from his or her basic or special responsibility allowance for the period concerned.
21. The Commissioner accepts that it would be possible to arrive at a rough estimate or an educated guess from the requested information as to the contribution deducted by the council for a particular councillor (assuming that one was made for the same amount every year). However, he does not believe that this would be sufficient for the purposes of the DPA to ascribe a particular figure to a specific councillor. It therefore follows that if an individual cannot be identified from the requested information there cannot be a disclosure of personal data.
22. The Commissioner has referenced his Code of Practice on Anonymisation<sup>3</sup> and in particular, the section entitled 'Identification and the educated guess'. In this section it states that;

*'Data protection law is concerned with information that identifies an individual. This implies a degree of certainty that information is about one person and not another. Identification involves more than making an educated guess that information is about someone; the guess could be wrong. The possibility of making an educated guess about an individual's identity may present a privacy risk but not a data protection one because no personal data has been disclosed to the guesser. Even where a guess based on anonymised data turns out to*

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<sup>3</sup> <https://ico.org.uk/media/for-organisations/documents/1061/anonymisation-code.pdf>

*be correct, this does not mean that a disclosure of personal data has taken place. However, the consequences of releasing the anonymised data may be such that a cautious approach should be adopted, even where the disclosure would not amount to a disclosure of personal data. Therefore it may be necessary to consider whether the data should be withheld for some other reason, as discussed later in this code. This is clearly a difficult area of the law and in approaching questions of disclosure it can be helpful to look primarily at the possible impact on individuals and then to move on to the more technical issue of whether or not there is likely to be a disclosure of personal data subject to the DPA.*

23. The Commissioner has concluded that as requested information is not personal data as defined by the DPA, section 40(2) of the FOIA is not engaged.

## Right of appeal

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24. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:
- First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ
- Tel: 0300 1234504  
Fax: 0870 739 5836  
Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)
25. 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.
26. 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** .....

**Gerrard Tracey**  
**Principal Adviser**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**