

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 June 2015

Public Authority: Fylde Borough Council
Address: Town Hall
Lytham St Anne's
Lancashire
FY8 1LW

Decision (including any steps ordered)

1. The complainant requested the contact details of particular members of the remuneration panel at Fylde Borough Council ("the council") who the complainant referred to as "independent advisors". The council refused to provide the information using section 40(2) of the Freedom of Information Act 2000 ("the FOIA"). This exemption relates to personal data. The Commissioner's decision is that the request was correctly refused by the council. He does not require any steps to be taken.

Request and response

2. Following some exchanges between the parties, on 20 October 2014 the complainant wrote stating the following:
"...your staff kindly sent me the names of the "independent" advisors but it seems there is a reluctance on your part to disclose their contact details".
3. The council responded to the request on 6 November 2014. It refused to provide the information using the exemption under section 40(2) of the FOIA.
4. The complainant requested an internal review on 4 December 2014.

5. The council completed its internal review on 30 January 2015. It said that it wished to maintain its refusal and it provided further supporting rationale.

Scope of the case

6. The complainant made an eligible complaint to the Commissioner on 6 February 2015. The complainant has asked the Commissioner to consider whether the council correctly withheld the information using the exemption under section 40(2) of the FOIA.

Reasons for decision

Section 40(2)

7. This exemption provides that third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act 1998 ("the DPA").

Is the withheld information personal data?

8. Personal data is defined by the DPA as any information relating to a living and identifiable individual. The council provided the withheld information to the Commissioner. It consists of the personal email address of one individual and their telephone number, the personal email address of a second individual as well as their home address and the personal email address of a third individual as well as their former home address. The complainant has already been provided with the names of the individuals. The withheld information is clearly personal data as defined by the DPA.

Would disclosure breach the Data Protection Principles?

9. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the key issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations

10. When considering whether a disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the individual or individuals concerned. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
11. The council maintains that disclosure of the information would be outside the reasonable expectations of the individuals. It said that the council was not under any legal or other obligation to make contact details available to the public, did not have any practice of disclosing this information and had made no suggestion to the individuals concerned that this information would be disclosed. The council added that there is nothing about the circumstances of the role itself that would suggest that disclosure of this information ought to be within the panel members' reasonable expectations.

Consequences of disclosure

12. The council said that disclosing the contact details would make it possible for panel members to be contacted directly by members of the public. It said that such contact could be time-consuming, unwelcome or intrusive. It said that exposing panel members to this possibility would be unfair in view of the reasonable expectations described above. The council also expressed concern that it may become more difficult for the council to attract and retain volunteer panel members if their private contact details are to be placed into the public domain.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

13. To provide some background, the council explained to the Commissioner that the individuals concerned are members of the council's independent remuneration panel appointed under the Local Authorities (Members' Allowances)(England) Regulations 2003. The council said that the panel members could not be characterised as public officials, exercising decision-making powers and spending public money. They are unpaid volunteers. It said that the panel has responsibility for making recommendations to the council about the level of basic allowance, special responsibility allowances, dependent carers allowance and travel and subsistence expenses payable to members of the council. The council has a duty to have regard to the report of the panel before making or amending a scheme for the payment of such allowances. However, it is important to note that the panel is an advisory body, not

a decision-making body. The recommendations made by the panel may or may not be accepted by the council. The 2003 regulations require the council to make the reports of the panel public. Panel recommendations are discussed in formal council meetings, which are also open to the public. The minutes of the panel meetings (including the names of the members) are reported to the council as part of the public agenda for council meetings.

14. The council said that it appreciated that there is a legitimate public interest in Fylde residents being able to make representations to panel members about the remuneration of councillors however it said that it was not proportionate to disclose the contact details. The council explained that the complainant could write to the panel members care of the council and the correspondence would be passed on to them. The council added that members of the public also have the option of contacting a councillor, or placing questions on the agenda of council meetings. It argued that even if that was not the case, it would still maintain that the disclosure would be unwarranted because the legitimate interest in disclosure does not outweigh the legitimate right to privacy that the panel members have.
15. The complainant said that as a council tax payer and therefore the "paymaster" of the panel members he is entitled to have the requested information. He referred to the panel as "secret", and questioned the use of the volunteers by the council. The complainant said that he has a couple of simple questions relating to recent decisions for which he said the panel members had been "blamed". He said that he would not have confidence in the council to deliver accurate information to this panel through its offices. The complainant questioned why he could not have the contact details requested when he can see full details of elected representatives online.
16. There is always some legitimate interest in the disclosure of information that is held by public authorities. This is because disclosure helps to encourage the general aims of achieving transparency and accountability. It can also assist people in understanding the decisions made by public authorities and to be more involved in that process. However, as with the disclosure of any information, there is always the question of degree and the circumstances will not always warrant the disclosure of every last detail of a particular matter in order to satisfy the legitimate public interest. Public authorities also have to be mindful of their obligation to protect the right to privacy that individuals have where that is reasonable.
17. The council has highlighted that there is no specific obligation to disclose this information and no particular reason why the panel members would have expected it, unlike elected councillors, with a wider remit. The

Commissioner is not aware of any information that would contradict that. Moreover, the council does not even have up to date contact details for one of the panel members who has since left the panel. Regarding the wider circumstances, the Commissioner considers that the nature of a particular role can have a bearing on the reasonableness of disclosing information. For example, seniority and responsibilities, or how public facing a role is can be relevant factors. The Commissioner has considered the points made by the council about the nature of this particular role and he considers that these make it less likely that disclosure would have been within the reasonable expectations of the panel members. As the council says, they are unpaid volunteers, with a limited remit, who do not ultimately make the decisions. They are advisory only and their recommendations are made public.

18. The Commissioner also considers that the council has expressed valid concerns about the consequences of disclosure. Given that the Commissioner accepts that disclosure would not have been within the reasonable expectations of the panel members, the Commissioner considers that the disclosure would be unreasonably intrusive. As the council says, it may also make it more difficult to fill these roles in the future, given that the panel members are unpaid volunteers and a disclosure under the FOIA would be a disclosure to the wider public rather than just to those with a legitimate interest in contacting the panel members.
19. In this case, the complainant has been provided with the names of the panel members and their recommendations are made public. He also has the opportunity to make representations to the panel members albeit via the council or councillors. The complainant has provided no evidence to support his suggestion that the council could not be trusted to pass accurate information on. Moreover, the council has highlighted that members of the public can place questions on the council's agenda at meetings should they wish. The Commissioner's view is that there is sufficient transparency in this area and he agrees with the council's view that disclosure of this information would not be proportionate to any legitimate public interest.
20. In view of the above, the Commissioner considers that the disclosure would be unfair and therefore breach the first Data Protection Principle. This means that the council correctly relied on section 40(2) of the FOIA to withhold the information requested.

Right of appeal

21. 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

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

22. 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.
23. 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

Andrew White
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