

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 January 2015

Public Authority: Arnside Parish Council
Address: St Johns Cross Cottage
Sandside
Cumbria
LA7 7HX

Decision (including any steps ordered)

1. The complainant has requested time sheets for the clerk to the parish council. The council refused the request on the grounds that the timesheets are personal data belonging to the clerk. It therefore applied section 40(2) to the information.
2. The Commissioner's decision is that the council has correctly applied section 40(2) to the information.
 - The Commissioner does not require the council to take any steps.

Request and response

3. Following previous correspondence relating to a potential overspend for the ongoing year between the parties the complainant made a request for information on 6 October 2014 in the following terms:

"I wish to make three separate small FOIR regarding the following documents, electronic, paper, telecom notes etc.

- *Evidence of regular amendments to monthly risk management for the increased expenditure re wages now identified by the Chair*
- *Copies of detailed time sheets and financial record of payments to the previous clerk and deputy clerk, for the period 1st January 2013*

to 31st October, also [name of deputy clerk redacted] from the period 1st January 2013 to 31st October 2014.

- *Can you please provide me with evidence of monthly risk management amendments now in place to accommodate the increase expenditure which must be available for scrutiny at audit."*
4. The council responded on 21 October 2014. It said provided details relating to the complainant's concerns regarding council overspending. It also gave a direct answer to the first of the above questions.
 5. On the same date the complainant wrote to the council saying that he did not consider that the council's response answered his FOI request and asking when it would be responded to.
 6. The council then responded on 1 November 2014. It confirmed that part 2 of the request was exempt under section 40(2) of the FOI Act as it was personal data belonging to the Clerk. On the same date the complainant asked the council to confirm whether this was a refusal of his FOI request.
 7. On 3 November the council wrote to the complainant and confirmed that:
 - a) The council does not hold any details of any budget overspend and that this is not part of its risk management policy.
 - b) The information requested in part 2 is personal data and exempt. It confirmed however that financial information on payments from April 2014 to September 2014 had been provided to him. It also confirmed that this information is publically available and as such exempt under section 21 (information accessible to the requestor by other means).
 8. On 3 November 2014 the complainant asked the council if it holds time sheets for the clerk. The council responded on the same date confirming that this information is personal data and is exempt under section 40(2). On 4 November 2014 the complainant asked the council to review its decision in this respect.
 9. Following an internal review the council wrote to the complainant on 5 November 2014. It confirmed that it was applying section 40(2) to withhold the information.

Scope of the case

10. The complainant contacted the Commissioner on 18 November 2014 to complain about the way his request for information had been handled. He wishes the Commissioner to consider the council's application of section 40(2) to the timesheets of the clerk.
11. The Commissioner considers therefore that the complaint is the application of section 40(2) to the complainant's request for the timesheets of the clerk.

Reasons for decision

Section 40(2)

12. Information is exempt from disclosure on the basis of section 40(2) if it constitutes third party personal data (i.e. the personal data of anyone other than the individual making the request) and either the first or second condition in section 40(3) is satisfied.

Is the information personal data?

13. Personal data is defined in section 1 of the Data Protection Act (DPA) as follows:

'.....data which relate to a living individual who can be identified from those data or from those data and other information which is in the possession of, or likely to come into possession of, the data controller; and includes any expression of opinion about the individual and indication of the intentions of the data controller or any person in respect of the individual.'

14. The complainant suggests that the information could be redacted in order to ensure that the disclosed information is not personal data. He considers that the information which would be disclosed would only be time periods and that the only personal data which might be disclosed is the clerk's actual earnings, He argues that this would be available to the public in any event.
15. The Commissioner has considered this argument but does not consider this to be correct. The complainant has asked for the time sheets of a specific individual. He already knows the identity of the individual concerned. The information is the timesheets of the individual; a record of the specific hours they have worked and potentially the amount they have earned during that period.

16. The Commissioner is satisfied that even if the information were to be redacted of identifying information a disclosure of the information would be clearly about the clerk and therefore identifiable information about her as an individual. The Commissioner therefore considers that the information is personal data as defined in the DPA.

Would the disclosure of the information contravene any of the data protection principles?

17. For section 40(2) to apply, either the first or second condition in section 40(3) must be satisfied. The first condition in section 40(3) states that disclosure of personal data would contravene any of the data protection principles or section 10 of the DPA.

18. The relevant principle in this case is the first data protection principle. This states:

'Personal data shall be processed fairly and lawfully and, in particular shall not be processed unless –

At least one of the conditions in schedule 2 [DPA] is met....'

19. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:
- The reasonable expectations of the individual in terms of what would happen to their personal data,
 - The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed?
20. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be demonstrated that there is a pressing social need for a disclosure of the information to the public which overrides the expectations of the individual or any detriment that may be caused.
21. The Commissioner has considered whether a disclosure of the information would be fair to the clerk. The information on her hours of work is submitted to the council in order that she may be paid for those hours. It identifies the hours she has worked and any overtime which she has done within the particular period.
22. The Commissioner considers the clerk would have expectations that the council would use the timesheets she supplies in order to work out her

salary. She would also expect that details about her salary may be disclosed to the public as part of the council's normal accounting procedures. The council has already done this and the complainant has been provided with this information. He has not questioned this.

23. The Commissioner considers however that it would not be obvious to her that the timesheets would be disclosed to the general public in response to an FOI request. She would have no expectations that that would be the case. The information provides detailed information on the working hours of the clerk. The council has already said that the clerk is contracted to work for 18 hours and has provided the overall details of the money paid to her for overtime. This would fall within her expectations however further details would not.
24. The Commissioner has also considered whether there would be any detriment to the individual should the information be disclosed. As well as the general detriment of the breach of personal privacy which would occur the Commissioner notes that the complainant has been critical of the clerks overtime payments and suggested that the council monitors her activities more closely. The Commissioner considers that the disclosure of this information may well result in further criticism of her or her work by the complainant. For its part the council has already clarified that the overtime she has been carrying out is as a result of the fact that she is providing cover as the assistant clerk post is vacant.
25. The Commissioner therefore considers that a disclosure of the information would be unfair for the purposes of the first data protection principle.

Is there a pressing social need for the information to be disclosed?

26. As the Commissioner has considered that a disclosure of the information would on the face of it be unfair due to the expectations of the clerk and the detriment which would be caused he has considered whether there is a pressing social need for the information to be disclosed.
27. Where there is a pressing social need for the information to be disclosed this may result in a decision that a disclosure of the information is fair in spite of the expectations of the individual and any detriment which might be caused. The pressing social need needs to be balanced against these to determine whether the disclosure would be fair for the first data protection principle or not.
28. The complainant has argued that the clerk has worked overtime to the extent that the council has exceeded its budget for the half year. He has

said there is a public interest in knowing how and why this has occurred and making details of this available to the public for scrutiny and accountability. He considers that the payments may be due to the clerk being too slow at her work; hence his request that the council monitors her work and her time sheets more closely. He also argues that there have previously been issues identified with the council as regards its budget management, disclosed in previous audit reports.

29. The council however denies that it has exceeded its budget. It accepts that in the short term the clerk has worked additional hours but says that this has occurred due to a number of exceptional issues/projects, and because the clerk is effectively covering for the lack of an assistant clerk. It says that this has been borne in mind and details of the overall payments and finances have been published. It says that over the entire council it has actually underspent for the half year based upon its figures, even taking into account the overtime which the clerk has worked. It also says that it realises that any overspend in the first half of the year would need to be addressed in the second half.
30. The Commissioner has considered the above arguments. He accepts that the council will and does provide financial information to allow scrutiny of its financial management. The complainant's arguments have been explained by providing information on the loss of the assistant clerk and the explanation about exceptional projects. The council recognises the additional overtime payments it is making and has provided an explanation for this as well as details of how it intends to manage its finances for the remainder of the year to meet its budget as best as it is able to. The Commissioner therefore considers that the council appears to be meeting its legal obligations insofar as providing the public with information on its budgets and spending is concerned.
31. The Commissioner has therefore decided that there is no pressing social need for the requested timesheets to be disclosed in this case. The council was therefore correct to apply section 40(2) to exempt the information from disclosure.

Right of appeal

32. 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

33. 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.
34. 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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