

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 09 January 2018

**Public Authority:** Teignbridge District Council  
**Address:** Forde House  
Brunel Road  
Newton Abbot  
Devon, TQ12 4XX

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to the financial leaving settlement of the Chief Executive. Teignbridge District Council (the Council) refused to provide the requested information citing the exemption under section 40(2) of the FOIA (third party personal data) as its basis for doing so. The Commissioner's decision is that the Council has correctly applied section 40(2) of FOIA to the withheld information. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

#### Request and response

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2. On 7 June 2017 the complainant made the following request for information:

*'Could you please send me details of Teignbridge Council CEO (name redacted)'s financial leaving settlement following the full council discussion on the matter in Part 2 of the May 15<sup>th</sup> 2017 meeting.*

*We know this was a private matter, but details of the deal – in the region of (figures redacted) – have been leaked to us, and we are duty bound to ask for conformation of the accuracy of the figures quoted.'*

3. On 4 July 2017 the Council responded. It refused to provide the requested information citing the exemption section 40(2) of the FOIA. The Council failed to include details of its own internal review procedure so the complainant contacted the Commissioner on 5 July 2017.

4. After the intervention of the Commissioner, the Council provided the outcome of the internal review upholding its position on 3 August 2017

### **Scope of the case**

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5. The complainant contacted the Commissioner on 9 November 2017 to complain about the way his request for information had been handled.
6. The Commissioner has focussed her investigation on whether the Council correctly applied the exemption under section 40(2) to the complainant's request.

### **Reasons for decision**

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#### **Section 40(2) – Third party personal data**

7. This exemption provides that any 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 (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.
9. 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.
10. In this instance the Commissioner has reviewed the information that has been withheld and has identified that it relates to the named individual and the termination of her employment with the Council. On this basis the Commissioner accepts that the information in its entirety is the personal data of the named individual.

#### **Would disclosure breach the Data Protection Principles?**

11. 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 issue of fairness.

12. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individuals, the potential consequences of the disclosure and whether there is legitimate public interest in the disclosure of the information in question.

### **Reasonable expectations**

13. Whether an individual might reasonably expect to have their personal data released depends on a number of factors. These include whether the information relates to an employee in their professional role or to them as individuals.
14. In this case the Council has argued that the named individual, who was previously the Chief Executive, would not have a reasonable expectation of their personal data being disclosed into the public realm under FOIA. This is because the withheld information pertains to the termination of the named individual's employment, and that disclosure of the information by either party would represent an actionable breach of confidence.
15. The Council also explained that the timing of the request is important. *'Pursuant to its duties under the Local Government Transparency Code 2015 and The Accounts and Audit Regulations 2015... the Council will in due course need to publish...the total amount of any compensation... only takes effect in respect of the Council's formal accounts. Those will be published in May 2018.'*
16. The Commissioner understands that the named individual has no expectation that this personal information would be made publicly available before May 2018.

### **Consequences of disclosure/Damage and distress**

17. Disclosure is unlikely to be fair if it would have unjustified adverse effects on the named individual.
18. The Council has argued that the named individual's leaving has already been the subject of media attention and disclosure of the withheld information would have had the same consequences. At the time of the request she was seeking a new role: *'adverse media articles seeking to vilify her for no fault of her own would have been likely to prejudice her attempts to find a new role.'*
19. The Commissioner accepts that disclosure of the withheld information would adversely affect the individual's private life.

## **Balancing the rights and freedoms of the individuals with the legitimate interests in disclosure**

20. Given the importance of protecting an individual's personal data, the Commissioner's 'default' position in cases where section 40(2) has been cited is in favour of protecting the privacy of the individuals. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so.
21. The complainant has argued that *'we felt that the extremely generous pay-off deal at a time of national austerity was in the public interest. We believe that such figures should be available when public money is used to pay public servants.'*
22. The Commissioner recognises that the individual held the senior role within the Council, and as such would be likely to hold some expectation of public scrutiny in relation to their actions whilst in post. Whilst the Commissioner has therefore considered this factor, it is evident that the withheld information relates to the individual's employment rather than public responsibilities. In decision notice FS50438500<sup>1</sup> the Commissioner defined the distinction between information about the public role of an individual, and information contained within personnel files about an individual's employment. As explained in that decision the Commissioner and the First-tier Tribunal ("the Tribunal") have previously placed a strong weight on the disclosure of personal information where this relates to the accountability of actions by senior public servants in their official capacity, rather than the management of their employment. Although there is a public interest in ensuring that proper employment processes have been followed in the circumstances of this case, the Commissioner is not aware of any public evidence that provides plausible suspicion that this has not been so, which would strengthen the legitimate interest in disclosure.
23. In this case the Council understands the importance of transparency on the use of public funds and argued that this will be fulfilled when the financial details are published in May 2018.
24. The Commissioner recognises that the release of the individual's leaving settlement under FOIA, including the specific terms agreed between the

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<sup>1</sup> [https://ico.org.uk/media/action-weve-taken/decision-notices/2012/774398/fs\\_50438500.pdf](https://ico.org.uk/media/action-weve-taken/decision-notices/2012/774398/fs_50438500.pdf)

individual and the Council, would interfere with the rights, freedoms and legitimate interests of the named individual.

25. The Commissioner is not convinced that the specific information requested is of sufficient wider public interest to warrant overriding the protection of the third party personal data. The Commissioner is satisfied that on balance, the legitimate public interest would not outweigh the interests of the individual and that it would not be fair to disclose the requested information in this case.

### **Conclusion**

26. Having considered all the circumstances of this case, the Commissioner has concluded that releasing the withheld information under FOIA would not be within the expectations of the individual. This is because the information represents the terms agreed between the individual and Council in respect of the individual's leaving.
27. The Commissioner further notes, as she did in her decision notice for FS50438500, that the release of the withheld information would have the potential to impede the council to deal effectively with personnel issues in the future. This is because the routine disclosure of such information could inhibit the negotiation that allows public authorities to manage the departure of senior officers in a cost effective manner.
28. In view of the above, the Commissioner finds that disclosing the withheld information would contravene the first data protection principal because it would be unfair, and that the application of section 40(2) was correct.

## Right of appeal

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29. 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)

30. 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.
31. 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 .....**

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