

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

### **Decision notice**

**Date:** 8 June 2020

**Public Authority:** Exeter City Council  
**Address:** Civic Centre  
Paris Street  
Exeter EX1 1JN

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

---

1. The complainant made two requests for information to Exeter City Council ("the Council") relating to Pinhoe Community Hub, a project to provide improved facilities for the community in Pinhoe, Exeter. The Council initially refused the first request under section 14(2) of the FOIA – repeated requests. After reconsidering the request, the Council provided some of the information within its scope, but withheld some names, addresses and signatures under section 40(2) – third party personal data. Regarding the second request, which related to an internal audit report, the Council disclosed part of the report, but withheld the majority of it under all three limbs of section 36(2) – prejudicial to the effective conduct of public affairs.
2. The Commissioner's decision is that the Council correctly withheld the personal information falling within the scope of the first request under section 40(2).
3. Regarding the second request, for the internal audit report, the Commissioner has determined that the exemptions at sections 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c) are engaged in respect of the report. However, she has determined that the balance of the public interest favours disclosure of the withheld parts of the report. In respect of this, she has pro-actively applied section 40(1) – personal data of the applicant – and section 40(2) – third party personal data – to some of the information in in the report, which is therefore exempted from the

Council's duty to disclose. The Council, however, is ordered to disclose the remainder of the report, as described in this notice.

4. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
  - Subject to paragraphs 105-113 of this notice, disclose the internal audit report to the complainant.
5. The Council must take this step 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

---

### Request 1

6. On 15 July 2019 the complainant made the following request for information under the FOIA:

*"all information such as accounts, cheque payments, background papers, checks and balances and decisions reached relating to Pinhoe Hub please in accordance with Exeter City Council's Constitution."*
7. On 7 August 2019, the Council refused this as a repeat request under section 14(2) of the FOIA, on the basis that the complainant may already have obtained the information when she was a councillor.
8. Further correspondence followed, during which the complainant sought the Council's confirmation that the requested information, which may or may not have been made available to her as a councillor, was therefore available to the public, as it would be if it had been disclosed under the FOIA. The Council stated that this was not the case, and arranged to meet the complainant in person.
9. Following a meeting with the complainant on 26 September 2019, the Council issued a fresh response to her on 16 October 2019. In its response, it reconsidered her request of 15 July 2019 and provided some information under the FOIA. The Council withheld some information; specifically, it withheld some personal information on various forms under section 40(2) of the FOIA (third party personal data) and some bank details under section 31 (law enforcement).
10. The Council stated that nothing else falling within the scope of the request was held.

11. On 17 October 2019, the complainant requested an internal review. She queried the extent of the redactions. She also explained that her understanding was that a business plan and a "checks and balances" document were held by the Council, which would fall within the scope of the request.
12. The outcome of the internal review is explained in the Scope of the Case section of this notice.

## **Request 2**

13. On 1 September 2019, the complainant made a separate request to the Council in the following terms:

*"It has come to my attention a report raised by Internal Audit held at the City Council may mention issues raised by me and may include quoting me by name. May I please have a copy of this document to check anything attributed to my name has been correctly attributed?"*

14. On 24 September 2019, the Council responded. It provided the complainant with what it described as "a redacted version" of the report, stating that this redacted version included "all of the specific references" to herself, including a list of the concerns she had raised.
15. Later that day, the complainant requested an internal review. She stated that she had expected the Council to consider the full report for disclosure, under the FOIA.
16. On 22 October 2019, by which time the Council had met the complainant as set out previously, the Council provided the outcome of its internal review. It provided a further copy of the report, but it does not appear that any of the previously withheld information was disclosed at this stage. The Council stated that the remainder of the report was exempt from disclosure under section 36(2) of the FOIA – prejudicial to the effective conduct of public affairs – citing all three limbs of the exemption, as set out subsequently in this notice.

## **Scope of the case**

---

17. The complainant contacted the Commissioner on 16 October 2019 to complain about the way her requests for information had been handled. The Commissioner opened the investigation in January 2020.
18. Regarding request 1, the Council explained to the Commissioner that it had already carried out an internal review, as requested by the complainant on 17 October 2019, but unfortunately could not be certain

whether it had in fact written to her with the outcome. It provided its internal review response to her on 17 January 2020.

19. This response, which the Council explained was written prior to the Commissioner's investigation, stated that:
  - a signature had been redacted from the grant drawdown claim form (the Council explained that it considered that the signature, rather than the name itself, was exempt under section 40(2));
  - a name and address had been redacted from one of the invoices under section 40(2);
  - the Council did not hold a business plan or an updated business plan;
  - no further information was held.
20. Due to the Commissioner's investigation, the Council further reconsidered its handling of request 1, and it wrote to the complainant again on 13 February 2020.
21. It disclosed one signature that had been redacted from the grant drawdown claim form, since it had realised it was in fact a standard sample signature rather than that of an individual. It also disclosed, with consent, an email address that had been redacted on the cheque payment request form, and the employee details which it had previously redacted from one of the invoices.
22. The Council also provided a copy of Pinhoe Community Hub's Business Strategy 2018 and Pinhoe Community Hub's Building Design Brief 2018, agreeing that these fell within the scope of the request.
23. The Council continued to withhold the following information:
  - (i) Under section 40(2) of the FOIA: a signature on the grant drawdown claim form, two signatures on the cheque payment request form, and a name and an address on an invoice;
  - (ii) Under section 31(1)(a) of the FOIA: Pinhoe Community Hub's bank details on the cheque payment request form.
24. The complainant subsequently confirmed to the Commissioner that she did not expect the bank details referred to in paragraph 23(ii) above to be disclosed under the FOIA.
25. Regarding request 1, therefore, this notice covers whether the information described in paragraph 23(i) above was correctly withheld under section 40(2) of the FOIA.

26. Regarding request 2, the Commissioner is aware that, shortly prior to the issue of this notice, external auditors provided the report to the complainant, in confidence. However, the complainant has sought throughout this matter to establish whether the report should have been made publicly available in response to her freedom of information request of 1 September 2019.
27. The Commissioner has, therefore, completed her investigation into whether any or all of the report should have been disclosed by the Council under the FOIA. This is also covered in this notice, from paragraph 63 onwards.

## **Reasons for decision**

---

### **Request 1**

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

28. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester, and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
29. In this case, the relevant condition is contained in section 40(3A)(a)<sup>1</sup>. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data (“the DP principles”), as set out in Article 5 of the General Data Protection Regulation (“GDPR”).
30. The first step for the Commissioner is to determine whether the withheld information constitutes personal data, as defined by the Data Protection Act 2018 (“DPA”). If it is not personal data, then section 40 of the FOIA cannot apply.
31. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

#### ***Is the information personal data?***

32. Section 3(2) of the DPA defines personal data as:
- 

<sup>1</sup> As amended by Schedule 19 Paragraph 58(3) DPA.

*“any information relating to an identified or identifiable living individual”.*

33. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
34. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
35. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
36. In this case, the redacted information comprises a signature on the grant drawdown claim form, two signatures on the cheque payment request form, and a name and an address on an invoice.
37. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to individuals.
38. She is also satisfied that, in the case of the name and address on the invoice, this identifies the relevant data subject (the address, in this case, clearly being that of the named individual).
39. With regard to the three signatures, while these do not instantly render the data subjects identifiable (since the signatures are not easy to read), the Commissioner is satisfied that the data subjects are nevertheless identifiable. The *names* of the persons signing the claim form and the cheque request form have been disclosed by the Council in the interests of transparency, and it is therefore clear that the adjacent *signatures* are theirs.
40. The Commissioner is therefore satisfied that the information redacted under section 40(2) in this case falls within the definition of “personal data” in section 3(2) of the DPA.
41. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
42. The most relevant DP principle in this case is set out in Article 5(1)(a) of the GDPR and is known as principle (a).

## **Would disclosure contravene principle (a)?**

43. Article 5(1)(a) of the GDPR states that:

*"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".*

44. In the case of an FOIA request, the personal data is "processed" when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.

45. The Commissioner has first considered whether the processing; that is, the disclosure, would be lawful.

### ***Is processing lawful?***

46. Article 6(1) of the GDPR specifies the requirements for lawful processing by providing that "*processing shall be lawful only if and to the extent that at least one of the*" lawful bases for processing listed in the Article applies.

47. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

*"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"<sup>2</sup>.*

---

<sup>2</sup> Article 6(1) goes on to state that:-

*"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".*

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

*"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".*

48. Therefore, in considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:-

- (i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information, and if so;
- (ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question; and if so,
- (iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

49. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests.

50. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

51. In this case, the Commissioner considers that there is a legitimate interest in the processes and operations of the Council, as a public authority, with regard to Pinhoe Community Hub since the Hub was partially funded by the Council. She has therefore considered whether this would extend to there being any legitimate interest in the specific information that has been withheld by the Council.

*Name and address on Pinhoe Community Hub invoice*

52. The Commissioner has considered whether there is any legitimate interest in the disclosure of the name and address on the invoice. The relevant invoice (the remaining details of which have been disclosed) was submitted to the Pinhoe Community Hub by a specific marketing company and has been marked as "paid". The name and address relate to, and identify, the individual paying the invoice on behalf of the Hub.

53. While this information is under consideration here due to its being held by the Council, the Commissioner notes that the invoice relates to a transaction between two third parties: the Hub and the marketing company.



54. The Commissioner understands that the money being spent by the Hub may include funds provided to it by the Council. It is presumably for this reason that the Council holds a copy of the invoice: the Hub is accountable to the Council.
55. The Commissioner has therefore considered whether the disclosure of the name and address is relevant to the legitimate interest she has identified in this case.
56. The Commissioner does not consider that the legitimate interest in the Council's processes and operations extends to the name and address of the individual who paid the invoice on behalf of the Hub.
57. The Commissioner has therefore determined that the disclosure of the name and address on the invoice would not be lawful, and that it was correctly withheld by the Council under section 40(2) of the FOIA.

*Signatures on Council forms*

58. Regarding the signatures on the grant drawdown claim form and the cheque payment request form, which are both Council forms, the Commissioner considers that the legitimate interest she has identified in the Council being transparent about its processes and procedures with regard to the Hub, would, potentially, extend to who signed the forms. The legitimate interest may therefore be said to apply to both the names of the signatories and the signatures.
59. However, turning to the question of whether disclosure of the signatures is necessary to meet the legitimate interest in disclosure of the information (part (ii) of the three-part test), since the Council has disclosed the names of the persons signing the forms, the Commissioner can see no need for the disclosure specifically of the signatures in order to meet the legitimate interest.
60. Since there is no legitimate interest in this case in the disclosure of the signatures, the Commissioner has, therefore, determined that disclosure of the signatures would not be lawful, and that the Council correctly withheld them under section 40(2) of the FOIA.

***Fairness and transparency***

61. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that she does not need to go on to separately consider whether disclosure would be fair or transparent.

## **The Commissioner's decision – request 1**

62. The Commissioner has therefore decided that the Council was entitled to withhold the information redacted from that disclosed in response to request 1, under section 40(2) by way of section 40(3A)(a).

## **Request 2**

### **Section 36(2) – prejudicial to the effective conduct of public affairs**

63. The information withheld under section 36(2) comprises an internal audit report ("the report") carried out in June 2019. It addresses concerns raised over the grants award process, in respect of a grant of £100,000, awarded by the Council to the Pinhoe Community Hub project.
64. The Council disclosed parts of the report to the complainant in response to her freedom of information request. Specifically, it disclosed part of the introduction and scope (section 1 of the report). As covered above at paragraph 14, it also disclosed all of the information submitted by the complainant relating to the concerns, questions and requests she raised, of which there are seven, contained within section 3 of the report. This disclosure did not include the Council's responses to the information submitted by the complainant.
65. The Council withheld the remainder of the report under section 36(2) of the FOIA, including the names of contributors to the report (contained in section 1 of the report), the background (section 2), all of its responses to the complainant's concerns (section 3), and its summary and recommendations (section 4).
66. Section 36(2) of the FOIA states that information is exempt from disclosure under the FOIA if, in the reasonable opinion of a "qualified person", disclosure of the information:
- (b) would, or would be likely to, inhibit—
    - (i) the free and frank provision of advice, or
    - (ii) the free and frank exchange of views for the purposes of deliberation, or
  - (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.
67. In order to engage section 36(2), it is necessary for a public authority to obtain the opinion of its qualified person ("QP"), which for the Council would be either its Chief Executive or Monitoring Officer. The opinion

must be on whether inhibition or prejudice (relevant to the subsection cited) would be (at least) likely to occur as a result of disclosure of the information in question.

68. The Council confirmed that the QP for the purposes of considering the request was Baan Al-Khafaji, the Council's Monitoring Officer.
69. When responding to the complainant in October 2019, the Council sought the QP's opinion as to the application of the exemption. The QP was aware of the contents of the report.
70. The Council has provided to the Commissioner a record of the QP's opinion. It demonstrates that she was consulted on the application of all three limbs of section 36(2) – that is, subsections 36(b)(i), 36(2)(b)(ii) and 36(2)(c) – being engaged with regard to the withheld sections of the report. The Commissioner is satisfied that the Council identified its correct QP and that an opinion was sought from that individual.
71. As is set out below, in order to make a finding as to whether any of the subsections of section 36(2) are engaged, the Commissioner must consider whether the QP's opinion was a "reasonable" opinion to hold in respect of those subsections which have been cited.
72. It is important to highlight that it is not necessary for the Commissioner to agree with the opinion of the QP in a particular case. The opinion also does not have to be the only reasonable opinion that could be held, or the most reasonable opinion. The Commissioner only needs to satisfy herself that the opinion was reasonable; in other words, that it was an opinion that a reasonable person could hold.
73. The Commissioner will consider all relevant factors to assess whether the opinion was reasonable. These may include, but are not limited to:
  - Whether the inhibition envisaged by the QP relates to the specific subsection(s) of section 36(2) that are being claimed. If the prejudice or inhibition envisaged is not related to the specific subsection, the opinion is unlikely to be reasonable.
  - The nature of the information and the timing of the request; for example, whether the request concerns an important ongoing issue requiring the free and frank provision of advice.
  - The QP's knowledge of, or involvement in, the issue.
74. The Commissioner will also consider the level of likelihood of prejudice that has been cited by the QP.

75. In this case, the Council and the QP have referred to all three limbs of the exemption. Regarding the exemption at section 36(2)(c) – that disclosure would otherwise prejudice the effective conduct of public affairs – the approach of the Commissioner to this subsection is that it should only be cited in relation to a prejudice that would not be relevant to any of the other exemptions in Part II of the FOIA.
76. The Commissioner has reviewed the QP's opinion, and her reasoning, in detail. The QP stated: *"disclosure of the audit report would be likely to inhibit the ability of council officers to express themselves openly, honestly and completely when taking part in an audit... audit officers need to secure full co-operation from council officers, who need to have the freedom to express their opinion on matters of significance and sensitivity to the Council"*.
77. The QP noted that audit officers provide advice to the Council, and need to be able to do so freely and honestly, and she noted the need for a safe space in which *"to work and to deliberate allegations, issues and potential solutions... with a view to rectifying Council policies and procedures where required"*.
78. The QP also considered that the Council would be less likely to commission internal audit reports if there was an expectation that they would be published, and *"therefore failure to follow Council policies and procedures would be less likely to be brought to light and rectified"*.
79. Having reviewed all of the QP's opinion in detail, the Commissioner is satisfied that the inhibition which she envisages relates to all three limbs of the exemption. That is, the QP envisaged inhibition to the need for the Council to have a safe space for the free and frank provision of advice to take place, and to have free and frank discussions, and has also considered that the effective conduct of public affairs could be prejudiced if internal audit reports were not used as a way of exploring the effectiveness of Council policies and procedures.
80. She therefore considers that the QP's reasoning covers sections 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c).
81. The Commissioner is satisfied that the QP had knowledge of and involvement in the relevant issues.
82. Regarding the timing of the request and the nature of the information, the Commissioner is satisfied that, both in terms of general concern over the participation in and commissioning of audit reports, and since the specific report discusses Council processes relating to the award of a grant regarding which the overall project itself is still ongoing

(construction of a building is planned for 2021/2022), it was reasonable for the QP to envisage some inhibition and prejudice.

83. As to whether the QP's opinion was reasonable on the level of likelihood of that inhibition and prejudice occurring, the QP's opinion was that disclosure of the information "*would be likely*" to inhibit and prejudice the effective conduct of public affairs in the ways specified. This is a lower level of probability than "*would*", but one which is still significant.

84. The Information Tribunal in *John Connor Press Associates v Information Commissioner* (EA/2005/0005, 25 January 2006), stated:

*"We interpret the expression 'likely to prejudice' as meaning that the chance of prejudice being suffered should be more than a hypothetical or remote possibility; there must have been a real and significant risk."*

85. With this view in mind, the Commissioner has considered the opinion of the QP. In the circumstances of the case, and having reviewed the withheld information, the Commissioner is satisfied that it was reasonable for the QP to hold the opinion that inhibition and prejudice relevant to sections 36(2)(b)(i) and (ii) and 36(2)(c) would be likely to occur if the information were disclosed.

86. The Commissioner is therefore satisfied that the exemptions at sections 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c) are engaged. Since these are qualified exemptions, the Commissioner has considered the balance of the public interest in this case.

### ***The balance of the public interest***

87. Having accepted that the opinion of the QP was reasonable, the role of the Commissioner here is not to challenge or reconsider her conclusion on the reasonableness of that opinion. Instead, her role is to consider whether the public interest in disclosure equals or outweighs the concerns identified by the QP.

88. Having found that the QP's opinion was reasonable, appropriate weight must be given to that here. As to how much weight it should carry in the balance of the public interests, the question here is what would be the severity, extent and frequency of the inhibition and prejudice identified by the QP.

### ***The complainant's view***

89. The complainant was concerned about the procedures that had been followed with regard to the payments to the Hub project. She informed the Commissioner that she had made a formal objection to the External Auditor about the Council's Annual Account, under section 27 of the

Audit and Accountability Act 2014. She explained that, at the date of the request, work was ongoing by the External Auditor and that the Annual Audit had not formally been concluded. She stated: *"Given the Internal Audit Report details the review of the payments to Pinhoe Hub I consider this document should in the interests of transparency be open to scrutiny"*.

*The Council's view*

90. The Council has explained that, in order to be effective, audits rely on contributors to the process being able to provide *"confidential or commercial sensitive information"* as well as their advice and views. The Council considers that removing the *"safe space"* in which advice can be provided, and in which free and frank discussions can take place, would be *"likely to prejudice the Council's ability to investigate non-compliance with the Council's policies and procedures. Officers are less likely to candidly engage in such exchanges going forward if there is an assumption that internal audit reports will be disclosed into the public domain"*.
91. The QP argued: *"the implication is that internal audit reports are less likely to be commissioned and therefore failure to follow Council policies and procedures would be less likely to be brought to light and rectified"*.
92. In balancing the arguments, the Council concluded that *"the public interest would best be served by maintaining the confidential nature of internal audit reports"*.
93. The Council also advised the Commissioner that *"the ability to scrutinise internal audit reports is maintained through the Council's Committee Scrutiny process and access to senior officers whereby elected Councillors are able to hold the Council to account. The applicant could raise the issue with their ward councillor and the issue could subsequently be raised at the Audit and Governance committee where issues could be debated"*.

*The balance of the public interest: the Commissioner's view*

94. It is the Commissioner's well-established approach, in line with the spirit of the FOIA, that there is always a public interest in transparency over how a public authority conducts its business and reaches decisions that have an impact on the public.
95. As explained previously, in cases where any or all of the exemptions at section 36(2) have been cited, it is for the Commissioner to consider the severity, extent and frequency of the inhibition and prejudice that the QP has identified as being likely to occur, and to balance this against the

general public interest in transparency and any other factors, specific to the case, which favour disclosure of the information.

96. In this case, the Commissioner considers that there are additional factors lending weight in favour of the disclosure of the report. While it would not be appropriate to disclose its contents in detail here, the report includes content relating to procedures followed and the Commissioner considers there to be a valid and weighty public interest in the disclosure of that content.
97. She notes that the QP considers that any participation in future internal audits would be less candid in terms of the provision of advice, and discussion and debate, if this report were published.
98. However, having reviewed the report in detail, the Commissioner does not consider that the inhibition and prejudice likely to result from disclosure would be of great extent, severity or frequency. It is normal in any public authority to ask officers to reflect on processes that were followed where a concern has been raised. The report in this case reflects on processes followed by the Council as a collective organisation, and does not seek to blame any individual. She is not persuaded that there is would be an extensive or severe risk that Council officers would frequently cease to participate in such exercises in future, in a candid way, due to the disclosure of this specific report.
99. Neither is the Commissioner persuaded that any prejudice to the audit process in general, that is, prejudice to the Council using the audit process in future as a way of examining and reflecting on processes and activities, would be frequent, severe or extensive, following the disclosure of the report in this case. This is because any future information request would be considered separately and on its own merits. It is not the case that disclosure of the information in question here would set any strong precedent.
100. She notes that the background to the concerns being addressed in the report, including the decision to award £100,000 to the project, and the relocation of the Hub to a different site, were publicly-known at the date of the request, due to the Council's own reporting and a period of public consultation; these matters were also being covered at the time in local news reports.
101. The Commissioner also notes that the concerns being addressed relate to events from several months before the report was prepared, and the Council was, evidently, acting on the report's conclusions by the date of the request.

102. On the facts of this case, while it was reasonable for the QP to envisage some inhibition and prejudice to the effective conduct of public affairs in the ways specified, having considered the severity, extent and frequency of that inhibition and prejudice, the Commissioner has determined that it does not outweigh the factors in favour of disclosing the report, in the public interest. Her conclusion is, therefore, that the public interest in the maintenance of the exemptions provided by sections 36(2)(b)(i), 36(2)(b)(ii) and 36(2)(c) does not outweigh the public interest in disclosure.

103. Subject to the following paragraphs, the Commissioner therefore orders the disclosure of the report.

104. In cases where the Commissioner orders a public authority to disclose information, she will consider whether the information contains personal data. Where she identifies personal data within the information, she may proactively apply section 40 of the FOIA – personal information – and order that the personal data be redacted prior to disclosure.

*Personal data of the complainant*

105. In this case, the Commissioner is satisfied that some parts of the report comprise the personal data of the complainant.

106. The complainant, as explained in the Scope of the Case section of this notice, has recently been provided with the report. However, this notice addresses whether the report should be made available to the public in its entirety.

107. The Commissioner has determined that the following information identifies and relates to the complainant, and is therefore her personal data within the definition at section 3(2) of the DPA:

- all of the introductory statement in section 3 of the report except for the final sentence;
- paragraph 4.5 of the report;
- the complainant's name, at various places within the report.

108. The Commissioner has, therefore, pro-actively applied section 40(1) of the FOIA to this information, since it is the personal data of the applicant. This is an absolute exemption, and the Council is not required to provide this information under the FOIA.



*Third party personal data*

109. The report includes the names and job titles of a number of individuals who contributed to the report. The Commissioner is satisfied that this identifies and relates to those individuals, and therefore comprises personal data within the definition at section 3(2) of the DPA.
110. Following the approach described in the previous section of this notice in respect of request 1, the Commissioner has considered whether it would be lawful, fair and transparent to disclose this third party personal data, or whether it should be withheld under section 40(2) of the FOIA.
111. She is satisfied that it would be lawful, fair and transparent to disclose the first two names and job titles which appear in the withheld part of section 1, since these individuals are senior officers (the Chief Finance Officer and the Monitoring Officer), and it would be entirely expected that they play a part in the preparation of such a report. The names of these two individuals also appear elsewhere in the report and should be disclosed throughout.
112. The Commissioner is also satisfied that a further two individuals are named and identified in the report in their capacity as directors (they are named (i) in section 3 response to q4, and (ii) in paragraph 4.5 of the report). For the same reasons, these individuals' names and job titles should be disclosed.
113. The Commissioner is satisfied, however, that all other names and job titles appearing in the report should be withheld under section 40(2), as, having considered all relevant factors, she has determined there is no lawful basis for processing this information. While two of these named individuals had evidently previously been in senior posts, she notes that they were no longer in those posts when the report was drawn up. In the case of all of these individuals, therefore, she is satisfied that the rights and freedoms of the individuals outweigh the legitimate interests in the disclosure of their personal information.

**The Commissioner's decision – request 2**

114. Subject to paragraphs 105-113 above, the Commissioner orders that the Council discloses the report to the complainant, under the FOIA.

## Right of appeal

---

115. 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@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

116. 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.

117. 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 .....**

**Ben Tomes**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**