

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 23 March 2021

**Public Authority:** Cambourne Town Council  
**Address:** Town Council Offices  
The Hub  
Cambourne Community Centre  
High Street  
Great Cambourne  
Cambourne  
CB23 6GW

#### Decision (including any steps ordered)

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1. The complainant has requested information from Cambourne Town Council ("the Council") about salary band allocation for staff members and public money spent on several different areas.
2. The Commissioner's decision is that the Council was entitled to withhold the requested information under section 40(2) of the FOIA.
3. The Commissioner does not require the Council to take any further steps.

#### Request and response

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4. On 27 July 2020, the complainant wrote to the Council and requested information in the following terms:

*"1, Salary band allocation for each respective position that is part of the Town\Parish Council*

*2, In the last financial year how much public money has been spent on external contractors\specialists maintaining gardens, green areas, 'trees' and in addition fencing.*

*3, In the last five years how much public money has been spent on external contractors\specialists conducting any work relating to 'trees' or bushes, how much has been awarded to a single entity if multiple organisations have received public money."*

5. The Council responded on 6 August 2020. It provided some information in relation to parts 2 and 3 of the request. However, it refused to provide a response to part 1 of the request, citing section 40(2) – personal information.
6. The complainant asked for an internal review on 6 August 2020. They explained that they were satisfied with the response to parts 2 and 3 of the request but wanted a review on part 1.
7. Following an internal review the Council wrote to the complainant on 9 September 2020. It upheld its original position.
8. During the Commissioner's investigation, she asked the Council to consider if there were different ways in which the information could be disclosed to the complainant, without identifying individuals.
9. On 9 March 2021, the Council provided further information to the complainant, which consisted of the salary bandings grouped together into two groups; the five employees on the highest salaries and then the remaining nine employees.

## **Scope of the case**

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10. The complainant contacted the Commissioner on 24 September 2020, to complain about the way their request for information had been handled.
11. The Commissioner considers the scope of her investigation to be to establish whether the public authority is entitled to withhold the requested information under section 40(2) of the FOIA.

## **Reasons for decision**

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### **Section 40 personal information**

12. 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.

13. 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').
14. 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.
15. 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?***

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

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

17. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
18. 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.
19. 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.
20. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to the data subjects. Providing salary banding for individual roles within the Council, both relates to and identifies those concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.

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

21. 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.
22. The most relevant DP principle in this case is principle (a).

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

23. 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".*

24. 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.
25. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

***Lawful processing: Article 6(1)(f) of the GDPR***

26. 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>.*

27. 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: -

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<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".*

- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
  - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
  - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
28. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

*Legitimate interests*

29. 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. They can be the requester's own 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.
30. 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. Legitimate interests may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
31. The Commissioner accepts that there is a legitimate interest in the accountability of public authorities as a general principle. There is also the legitimate interest of the requester, the complainant.
32. In this case it is clear that the complainant is seeking access to the withheld information for a specific reason: to see any changes made to salary banding for specific roles within the Council since it has undergone a restructure.
33. The Commissioner considers that there is a legitimate interest in disclosure of this information.

*Is disclosure necessary?*

34. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.

35. As disclosure under the FOIA is disclosure to the world at large, it is rare that such processing will be necessary to achieve a legitimate interest.
36. Whilst the Council has attempted to supply some information to the complainant (see paragraph 9), the specific information that the complainant requested regarding salary band allocation, has not been made available.
37. The Commissioner is satisfied that the specific information requested in this case has not otherwise been made available to the public and that therefore, in this case there are no less intrusive means of achieving the legitimate aims identified.

*Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms*

38. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
39. In considering this balancing test, the Commissioner has taken into account the following factors:
  - the potential harm or distress that disclosure may cause;
  - whether the information is already in the public domain;
  - whether the information is already known to some individuals;
  - whether the individual expressed concern to the disclosure; and
  - the reasonable expectations of the individual.
40. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
41. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.

42. The Commissioner is mindful that disclosure under the FOIA is disclosure to the world at large and not just to the requestor. It is the equivalent of the Council publishing the information on its website.
43. The complainant has explained that when they requested the same information in 2015, the Council provided it. Since the request of 2015, there has been a restructure within the Council where job roles have changed and new positions have been created.
44. They went onto explain that when the job roles are advertised, the grade/banding range is advertised too.
45. The complainant says that other Councils have provided this information when requested and as Cambourne Town Council has refused to provide the requested information, it is causing them concern.
46. The complainant also advised that they were not satisfied with the Council's response of 9 March 2021, as it did not show the payscales for each role.
47. The Council has explained that it has withheld the salary bands for all staff employed by it, as due to the small number of employees, an individual could be identified if the information were to be released.
48. It has explained that there are 14 employees and a number of the positions are filled by single individuals, so the salary could be directly attributed to them and their income.
49. The Council explained that it considered if removing the names of the staff members would meet the request. However, as their names are already published on the staff structure, which is available on the Council website, it would not prevent them from being identified.
50. The Council has advised that the combined staff salaries are published in monthly financial statements and that this information is published on the Council website.

*The Commissioner's decision*

51. The Commissioner has viewed the withheld information and considers that, although the salary band is included, the specific salary for the individual is not. This is due to the way staffing structure and salary scales are formatted for Council salaries. Each individual is placed within certain points within a salary banding.

52. As stated in the Commissioner's guidance for requests for personal data about employees<sup>3</sup>, *"there is a legitimate public interest in knowing how public money is apportioned across an organisation, which includes salaries at lower levels. Therefore, for more junior staff, you might disclose the advertised salary range for these posts in bands of £5000."*
53. It also states, *"...when considering the legitimate interests test for salary information which is not routinely published, you should consider how much significant information you are disclosing about an individual's personal financial circumstances..."*
54. Based on the wording of this request, which seeks information about a job position's salary banding, rather than an individual's salary, the Commissioner does not consider that the request is seeking personal information. However, due to the small size of the Council, by releasing this information, along with the information that is already within the public domain, it would likely disclose the financial circumstances of some individuals.
55. Having taken into account all the circumstances of the case, and having considered the reasonable expectations of the individuals concerned, the potential consequences of disclosure, and the public interest factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. Therefore, she considers that there is no Article 6 basis for processing and disclosure of the information would be unlawful. It is therefore the Commissioner's view that the Council has correctly applied section 40(2) of the FOIA to withhold the requested information.
56. 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.

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<sup>3</sup> [https://ico.org.uk/media/for-organisations/documents/1187/section\\_40\\_requests\\_for\\_personal\\_data\\_about\\_employees.pdf](https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf)



## Right of appeal

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57. 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)

58. 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.
59. 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 .....**

**Phillip Angell**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
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**Cheshire**  
**SK9 5AF**