

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 June 2022

Public Authority: Nocton Parish Council
Address: The Hub
Main Street
Nocton
LN4 2BH

Decision

1. The complainant requested information from Nocton Parish Council ("the Council") relating to an alleged criminal offence and the salary of the Parish Clerk.
2. The Commissioner's decision is that the Council is entitled to rely on section 40(2) (personal information) of the FOIA to withhold the requested information.

Request and response

3. The complainant made the following information request to the Council on 25 August 2021:

"Please may I have:

1. Full Minutes of the Extraordinary Meeting held on Mon 27 April 2021

The may have been a reason to withhold details at the time, but not, as I understand it, after a criminal charge has been made against an individual which was then rejected by the police. Parishioners have a right to know how such a charge could have

been brought and what information was disclosed at the time to support the charge.

2. Staff Salary and Terms & Conditions of Clerk's appointment

In the minutes of the PC Meeting held on 4 May it is stated: "Amount withheld due to confidentiality".

There is absolutely no reason for the clerk's salary to be withheld. He is a public servant paid for by Nocton Council Tax payers, who have a right to know on what T&C he was appointed. It is clear that his travel expenses are going to be excessive and unprecedented and now that there are no Covid restrictions, he should not normally be allowed to attend Parish Council meetings by Zoom or other on-line method."

4. The Council refused to provide the information requested in question 1 of the request citing section 41 (information provided in confidence) of the FOIA as its basis for doing so. The Council also refused to provide the information requested in question 2 of the request citing section 40 (personal information) of the FOIA.

Reasons for decision

5. This reasoning covers whether the Council is entitled to rely on section 40(2) (personal information) of the FOIA to refuse to provide the requested information. Section 40(2) provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.
6. Section 3(2) of the Data Protection Act 2018 defines personal data as:
"any information relating to an identified or identifiable living individual."
7. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
8. In this case, as the Commissioner understands it the complainant has requested information relating to allegations of criminal offences which were made against an individual and information relating to the Parish Council Clerk's salary and terms of employment. The Commissioner is satisfied that the requested information is personal data as the information relates to the individual who had an allegation of a criminal offence made against them, and the Parish Clerk, and both those individuals are identifiable.

9. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focussed here on principle (a), which states:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
10. 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.
11. With regards to the information requested in question 1 of the request, the Commissioner considers the information to be criminal offence data as the information concerns the alleged commission of offences by an individual.
12. When considering the disclosure of criminal offence data under FOIA, information can only be disclosed if either the individual whose data it is has given their explicit consent for the information to be disclosed or, if they have manifestly made the information public themselves.
13. As the individual who has had an allegation of a criminal offence made against them has not consented to their personal information being disclosed, the Commissioner considers that there is no legal basis for the Council to disclose the requested information. If the Council was to do so, the Council would be in breach of principle (a).
14. If personal data is not criminal offence data or special category data, the personal information may be disclosed but only if it would be lawful, fair and transparent to do so. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.
15. With regards to the information requested in question 2 of the request, the Commissioner considers that the complainant is pursuing a legitimate interest and that disclosure of the Parish Clerk's salary, and terms and conditions of employment is, to some degree, necessary to meet that legitimate interest.
16. However, the Commissioner considers that the Parish Clerk has a strong and reasonable expectation that their salary and terms of employment will remain confidential to them and their employer. Furthermore, the Parish Clerk has expressed concern at the disclosure of the requested information stating that they have not given the Council permission to disclose their salary or terms of employment in response to the request.

17. The Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the Parish Clerk. Therefore, he considers that there is no legal basis for the Council to disclose this information and to do so would be in breach of principle (a).
18. The Commissioner's decision is that the Council is entitled to rely on section 40(2) of the FOIA to refuse to provide the entirety of the requested information. The Commissioner requires no further action to be taken by the Council in relation to this request.

Right of appeal

19. 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

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

20. 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.
21. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF