

FREEDOM OF INFORMATION ACT 2000 (SECTION 50)

DECISION NOTICE

Dated 25th August 2005

Name of Public Authority: Corby Borough Council
Address of Public Authority: Grosvenor House
George Street
Corby
Northamptonshire
NN17 1QB

Nature of Complaint

The Information Commissioner (the "Commissioner") has received a complaint which states that on 1st January 2005 the following information was requested from Corby Borough Council ("the Council") under section 1 of the Freedom of Information Act 2000 ("the Act"):

"the total amount of money paid to Former Temporary Finance Officer, Gary Moss, by the Former Chief Executive Nigel Rudd".

It is alleged that:

The Council has failed to provide the information in accordance with their obligations under section 1 (1) because they applied the exemption from disclosure in section 40 (2) (Personal information) inappropriately.

Section 40 (2) states that:

"(2) Any information to which a request for information relates is also exempt information if –

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied.

(3) The first condition is –

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene –

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would

contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded”.

The Commissioner’s Decision

Under section 50(1) of the Act, except where a complainant has failed to exhaust a local complaints procedure, or where the complaint is frivolous or vexatious, subject to undue delay, or has been withdrawn, the Commissioner is under a duty to consider whether the request for information has been dealt with in accordance with the requirements of Part I of the Act and to issue a Decision Notice to both the complainant and the public authority.

The Commissioner is satisfied that the total monies paid to Mr Gary Moss in his capacity as Former Head of Finance constitute his personal data for the purposes of the Data Protection Act (“the DPA”).

Section 1 (1) of the DPA states that:

“personal data” means data which relate to a living individual who can be identified –

- (a) from those data, or*
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,*

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual”.

The first data protection principle states that:

“personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-

- (a) at least one of the conditions in Schedule 2 is met, and*
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met”.*

The Commissioner is satisfied that the requested information does not constitute Mr Moss’ sensitive personal data.

The first data protection principle consists of two elements which public authorities must adhere to. Personal data must be processed fairly and lawfully and must not be processed unless at least one of the conditions for processing in Schedule 2 of the DPA is satisfied. The Council has claimed that releasing the requested information would breach the first data protection principle because they cannot satisfy any of the conditions for processing.

The Commissioner's decision is that disclosure of the total amount of money paid to Mr Moss would not breach the first data protection principle. The Commissioner is satisfied that releasing this information to the complainant would not be unfair or unlawful. The attached Statement of Reasons provides further explanation of this decision.

The Council has asserted that if the requested information is released to the public Mr Moss is likely to allege that he has been caused unwarranted damage and distress. Mr Moss could exercise his right under section 10 of the DPA to prevent the processing of personal data about him, including its disclosure. However, the Information Commissioner is not satisfied that disclosure of the information in question would breach the Data Protection Principles.

Further the Commissioner is satisfied that the Council can satisfy the sixth condition in Schedule 2 which refers to processing which is "*necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject*". This is on the basis that there is a legitimate interest in details of the amount of money spent on employing senior staff being made available to the public. This has been recognised for some time with information about salaries of senior staff being included within the financial statements of many public authorities.

There is a public interest in disclosing details of salaries and expenses paid to senior staff to increase accountability and transparency within public authorities. In this instance the Commissioner is satisfied that disclosing the information would not be unwarranted by reason of prejudice to Mr Moss' rights and freedoms or legitimate interests.

The Commissioner is further satisfied that the disclosure of this information would not breach any of the other data protection principles and therefore the exemption in section 40 (2) has been inappropriately applied.

Action Required

In view of the matters referred to above the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he requires that:

The Council shall, within 30 days of the date of this Decision Notice, provide the complainant with a record of the total figure paid to Mr Moss as requested on 1st January in accordance with section 1 (1) of the Act. This figure will combine total gross salary and travel, subsistence and accommodation costs.

Statement of Reasons

The Commissioner has read the complainant's request of 1st January 2005 closely and is satisfied that the request is limited to the total figure that was paid by the Council to Mr Moss.

The Commissioner is satisfied that disclosure of the information would not breach the first data protection principle which requires that information is processed fairly and lawfully and in accordance with certain conditions. In forming a view on what expectations would be reasonable, the Commissioner has considered the role and seniority of the individual and the Council's general practices at the time of Mr Moss' employment.

The Council has confirmed that during the period of Mr Moss' employment, the only information relating to employee salaries and expenses that was made available to the public was information which they were obliged to produce in their financial statements. The Commissioner understands that such information was generally presented in an aggregated and anonymised format.

During a telephone conversation on 4th July 2005 the Council indicated that to the best of its knowledge Mr Moss was not informed at the time of his appointment that information about monies paid to him, such as his salary and accommodation allowance ("financial details"), would remain confidential. In this case the Commissioner does not accept that Mr Moss could have reasonably expected that his financial details would not be published.

The Commissioner recognises that ultimately all public sector employees are accountable to the public. However the Commissioner is satisfied that in general, occupants of senior posts within public authorities have for some time understood that they are more likely to be exposed to greater levels of scrutiny and accountability than staff in more junior positions. Senior staff, such as Mr Moss, are responsible for policy decisions affecting the public and for the expenditure of public funds. Greater levels of scrutiny help to ensure that they are fully accountable for their actions when carrying out their professional duties, which is in the public interest.

The Commissioner is aware of the information in the public domain about the circumstances surrounding Mr Moss' employment and in particular the Council's planning and negotiation in relation to the appointment. The daily rate agreed at the time of appointment reflected the temporary nature of the position and the fact that it did not attract holiday pay or sickness benefits. However the Chief Executive of the Council subsequently agreed to include holiday and pension contributions in the contract without any reduction in the daily rate. In view of this not only was the amount of money paid to Mr Moss significantly higher than the average rate paid to a full-time employee but it was also above the range of rates agreed for this type of temporary placement.

The Audit Commission made critical comments about the way in which Mr Moss' appointment and continued employment was handled by the Council's Former Chief Executive. For example they criticised the extension of the contract and the failure to explore alternative sources of provision with similar authorities in the area. The Commissioner is satisfied that access to more official information held by public authorities will increase transparency and accountability for policies and decisions, including the way that public money is spent.

The Commissioner is satisfied that, in the circumstances, there is a public interest in the total amount of money paid to Mr Moss being made publicly available. This should inform the ongoing debate on this issue and should help to ensure that the Council is held to account for the performance issues identified by the Audit Commission. This additional public scrutiny should increase the likelihood that procedures are put in place to avoid a recurrence of similar problems in the future.

The Commissioner is satisfied that releasing the requested information would be fair and would not breach the first data protection principle. This is because of the public interest in disclosing the requested information and the fact that, in the Commissioner's opinion, it is reasonable for certain information about senior staff, such as the financial details requested, to be disclosed to the public.