

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Dated 30 April 2007

**Public Authority:** Wrexham County Borough Council  
**Address:** Guild Hall  
Wrexham  
LL11 1AY

### Summary

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1. The complainant requested information from the public authority relating to the senior employees employed at the Authority. The complainant requested the names of those senior employees that had their principal private residence within the boundary of the council borough and the names of the senior officers that pay council tax in the borough. The public authority initially confirmed the number of senior officers employed, providing details of their name and position within the Authority, and further, provided a breakdown in respect of the numbers living within and outside the County Borough. The Authority refused to confirm the location of the individual's area of principal residence and sought to rely on sections 40 (2) and (3) (a) of the Freedom of Information Act, 2000. The Authority stated that the information requested constituted personal information and that its disclosure would breach the principles of the Data Protection Act 1998. The Commissioner sought evidence to evaluate the Authority's position and has decided, in this case, the authority applied the Act appropriately by refusing the request by virtue of section 40.

### The Commissioner's Role

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2. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 ('the Act'). This Notice sets out his decision.

### The Request

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3. The complainant has advised that on 14 November 2005 the following information was requested from the public authority in accordance with section

1 of the Act:

*“How many of the senior employees in Wrexham County Borough Council (Chief Officer level and above) have their principal private residence and pay Council Tax in the Borough?”*

*The names of all the relevant officers and whether they have a residence in the Wrexham Borough.”*

4. It should be noted that the original request for information and subsequent complaint to the Information Commissioner's Office was made on behalf of the complainant. It is understood that the person making the original request and subsequent complaint was acting in the capacity of the complainant's assistant.
5. The public authority responded with a formal Refusal Notice on 19 January 2006. The complainant was however initially provided with details of the total number of senior officers employed by the Authority, the number of which lived within the County Borough area and the number that lived outside the County Borough area. The Refusal Notice also provided the names of the senior officers and their position within the Authority. The Refusal Notice stated that the information requested in respect of the names of the officers and confirmation of the area of their principal place of residence constituted personal information and was therefore exempt from disclosure.
6. The complainant wrote to the public authority on 21 February 2006 appealing the Refusal Notice and requesting that the public authority undertake an internal review of its decision.
7. In response the public authority wrote to the complainant on 20 March 2006. The public authority's Scrutiny Manager stated:

*“Details of the number of senior employees at Chief Officer level and above residing within and outside the County Borough were provided. However the Exemptions Panel concluded that details of individual officers was exempt under section 40 (2) and (3) (a) of the Freedom of Information Act.*

*Having interviewed the Panel Members and considered the detail of the exemptions I must conclude that I concur with the findings of the Exemption Panel and I cannot therefore uphold your complaint and supply you with the additional information requested.”*
8. In view of the above, the complainant contacted the Information Commissioner's Office on 10 April 2006 requesting a determination.

## The Investigation

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### Scope of the case

9. On 10 April 2006 the complainant contacted the Commissioner to complain that

the local authority, in its refusal to disclose the information requested, had wrongly applied the Freedom of Information Act.

10. The Commissioner has primarily considered the public authority's use of the section 40 exemption to refuse to provide the information requested.
11. The complainant contends that the information requested is of such a general nature that it cannot, in practice, be regarded as personal information and that it should not therefore be withheld from the public.
12. The complainant further argues that it is a matter of significant public interest to know whether any particular officer resides in the borough of the Authority and pays council tax to that Authority accordingly.
13. It is the Authority's case that the residential location of a senior officer's primary place of residence is a matter of personal choice which has no influence or impact upon the manner in which they perform the public function of their employment.

### **Chronology of the case**

14. The complainant made a complaint to the Commissioner on 10 April 2006 subsequent to the public authority having issued a Refusal Notice on 19 January 2006 and conducting an internal review.
15. The Commissioner wrote to the public authority on 28 April 2006 requesting further details in respect of the exemption being relied upon.
16. The public authority responded to the Commissioner on 5 May 2006. The response provided further information including the report submitted to the Authority's Exemptions Panel and argument as to why the public authority took the view that the information ought not to be released.
17. Having considered the arguments of both parties, the Information Commissioner wrote to the complainant on 1 February 2007, setting out his preliminary views in respect of the Authority's handling of the request. The complainant was not in agreement with such preliminary views and confirmed that he wished the Information Commissioner to make a formal decision.

### **Findings of the case**

18. The public authority's Refusal Notice of 19 January 2006 confirmed that its refusal to disclose some of the information requested was due to the fact that the public authority took the view that its disclosure constituted personal information, which did not relate to the senior officers' public role or duties. Further, that disclosure of the information would breach the principles of the Data Protection Act 1998.
19. The Authority, in dealing with the request has provided the complainant with the following information:-

*The total number of senior employees at Chief Officer level or above.*

*The total number of senior employees at Chief Officer level or above that live within the County Borough area.*

*The total number of senior employees at Chief Officer level or above that live outside the County Borough area.*

*The names of senior employees at Chief Officer level or above employed by the Authority, including details of the individual's job title.*

20. In its consideration of the request the Authority sought the views of a number of the officers who were the subject of the request. The Authority has informed the Information Commissioner that the officers objected to the disclosure of the information to the complainant.

## Analysis

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21. The Commissioner has considered the public authority's response to the complainant's request for information.

## Exemptions

### Section 40

22. Section 40(2) provides an exemption for information which is the personal data of any third party, where disclosure would breach any of the data protection principles contained in the Data Protection Act 1998( the "DPA"). (The relevant sections of section 40 are included in the legal annex attached to this notice).
23. In order to rely on the exemption provided by section 40, the information being requested must therefore constitute personal data as defined by the DPA. The DPA defines personal information as:

*"...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..."*

24. The Commissioner is satisfied that the information requested by the complainant is personal data within the meaning of section 1(1) of the DPA as it is data which relates to living individuals. Whilst the release of details such as salary bands and job descriptions would not be in dispute an employee's place of residence is a personal matter and should not impinge upon their role within the Authority. Whilst the Commissioner appreciates the complainant has not requested the personal addresses of the officers concerned, the Commissioner is of the opinion that information in respect of whether or not they live within the

boundary of an authority is nonetheless personal information which relates to the individuals private lives.

### **The first data protection principle**

25. The first data protection principle requires that the processing of personal data should be fair and lawful and that personal data should not be processed unless at least one of the conditions in Schedule 2 of the DPA is met.
26. In considering whether the disclosure of the requested information would be fair the Commissioner has considered the reasonable expectations of the data subjects as to how the information would be used by the Authority and what the effect of disclosure would be on the data subjects.
27. The Commissioner accepts that employees of public authorities should be open to scrutiny and accountability because their jobs are funded by the public purse.
28. The Commissioner's guidance suggests that 'if the information requested consists of names of officials, their grades, jobs or functions or decisions made in their official capacities, then disclosure would normally be made'.
29. The Commissioner also believes that as people in such senior positions are responsible for policy decisions affecting the public and the expenditure of public funds they should expect a greater degree of scrutiny of their role and accountability over their actions. However, the Commissioner takes the view that a distinction must be drawn between personal data relating to an individual's public and private life. Whilst it is therefore appropriate to scrutinise a senior officer in his/her professional capacity, including that person's ability to perform the duties that their role demands, the Commissioner is not persuaded by the argument that a senior officer's place of residence would materially affect or influence the officer in his/her capacity as a public servant.
30. In light of the above the Commissioner believes that to disclose the information requested would breach the fairness element of the first data protection principle and therefore the exemption provided by section 40(2) of the Act is engaged.
31. The Commissioner has decided that the Authority was correct to rely on the exemption contained at section 40 of the Act as a basis to withhold this information and in doing so has not breached section 1 of the Act.

### **The Decision**

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32. The Commissioner's decision in this matter is that the public authority has dealt with the complainant's request in accordance with the requirements of Part 1 of the Act because it applied the Act correctly in refusing the request by virtue of section 40.

## Steps Required

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33. As the Commissioner's decision is that the public authority has responded to the complainant's request in accordance with the Act, no remedial steps are required.

## Right of Appeal

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34. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 30<sup>th</sup> day of April 2007**

**Signed .....**

**Anne Jones  
Assistant Commissioner**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**

## Freedom of Information Act 2000

### Legal Annex

#### Personal information

**Section 40(1)** provides that –

“Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.”

**Section 40(2)** provides that –

“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.”

**Section 40(3)** provides that –

“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.”

**Section 40(4)** provides that –

“The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”

**Section 40(5)** provides that –

“The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either-
  - (i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section

- 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
- (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed)."

**Section 40(6)** provides that –

“In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.”

**Section 40(7)** provides that –

In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act.