

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 17 November 2009

**Public Authority:** Hart District Council  
**Address:** Harlington Way  
Fleet  
Hants GU51 4AE

#### Summary

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The complainant requested detail of severance payments made by the public authority, including names, job titles and amounts. The public authority provided some information by department, but refused to give individual details citing section 40. The Commissioner found that section 40(3)(a)(i) was engaged but that sections 10(1), 17(1)(b) and 17(1)(c) were breached. He required no further action.

#### The Commissioner's Role

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1. 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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2. On 15 February 2007 the complainant made the following request:

"Could you please supply me with details of all severance payments made to Hart District Council employees since November 2004. Please include names of the employees, job titles and the respective amounts. Please supply me with this information by email. If you are unwilling to supply this information, please state clearly your reasons."

3. The public authority sought clarification on 19 February 2007 and stated that they were unable to name individuals as this was against the Data Protection Act. On 31 May 2007 the public authority provided some amounts by department, totalling £60,964.55 and stated that the rest of the information was exempt under section 40 of the Act.

4. On 7 June 2007 the complainant appealed to the public authority about their decision not to supply names and individual details of severance payments. He also queried the overall total as he was aware of two payments which alone came to £132,000. He also provided examples of other councils who he claimed had provided information by individual and urged the public authority to do the same.
5. The appeal was acknowledged on 8 June 2007 by the public authority and a reply was sent on 5 July 2007 explaining that the information provided was departmental totals and was for redundancies as well as pensions. It also stated that a further breakdown by individual was not possible as this would breach section 40. The reply also acknowledged that the £132,000 he quoted was not included (but should have been).

## **The Investigation**

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### **Scope of the case**

6. On 7 July 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled and the application of section 40. The investigation therefore concentrated on how the request for information had been handled and particularly whether section 40 was engaged.

### **Chronology**

7. The Commissioner wrote to the public authority on 30 June 2009 requesting an update on the case and the public authority replied on 24 and 31 July 2009 supplying background information.
8. The Commissioner wrote again to the public authority on 27 August 2009 to clarify certain aspects of the case and the public authority responded on 7 and 22 September 2009 with further support of their argument.
9. The public authority wrote to the complainant on 14 October 2009 to clarify their position. The Commissioner took this as their final submission on the case.

### **Findings of fact**

10. The Commissioner noted that some of the information concerning job titles was already in the public domain. The complainant made reference to this in his letter to the public authority of 7 June 2007 in which he states that it was revealed in the staff and general purposes committee that £132,000 was paid out to an IT manager who resigned in Jan 2005 and a corporate director whose employment terminated in Dec 2004.

## Analysis

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### Procedural Matters

#### Section 1 and Section 10

11. Section 1(1) of the Act states that:  
Any person making a request for information to a public authority is entitled –
  - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
  - (b) if that is the case to have that information communicated to him.
12. Section 10(1) of the Act requires that a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt of the request.
13. The public authority did not provide such a response to the complainant within twenty working days of the request so was in breach of section 10(1).

#### Section 17

14. Under section 17(1)(b) and 17(1)(c) of the Act the public authority is required, when relying upon an exemption such as section 40(2) by virtue of section 40(3)(a)(i), to specify the exact exemption in question (down to the subsection) and state (if it would not otherwise be apparent) why the exemption applies.
15. In its response to the complainant the public authority explained that it was unable to provide the requested information in further detail as the information was exempt under section 40 of the Act and breached the Data Protection Act. The Commissioner does not consider that this response complies with section 17(1)(b) or 17(1)(c) of the Act as it does not specify the exact subsection of section 40 the public authority was relying upon nor does it provide enough detail as to why that exemption applied.

### Exemptions

#### Section 40(3)(a)(i)

16. The public authority refused to disclose individuals' names and their severance payments as they claimed they were exempt under Section 40. The complainant argued that there were precedents set by other public authorities which demonstrated that the public interest in releasing the information was sufficient to overrule this.
17. Section 40 contains an exemption for third party personal data. In this case, section 40(3)(a)(i) is relevant as it contains an exemption where releasing the information would contravene the first data protection principle.

18. The Commissioner therefore considered a) whether the information in question was personal data and b) whether disclosure of the personal data under the Act would contravene the first data protection principle.

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

19. Personal data is defined in section 1 of DPA as data

*“which relate to a living individual who can be identified -*

*(a) from those data, or*

*(b) from those and other information 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 that individual”.*

20. When considering whether the information is personal data, the Commissioner had regard to his own published guidance: “Determining what is personal data” which can be accessed at:

[http://www.ico.gov.uk/upload/documents/library/data\\_protection/detailed\\_specialist\\_guides/personal\\_data\\_flowchart\\_v1\\_with\\_preface001.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf)

21. From the guidance there are two questions that need to be answered in the affirmative when deciding whether the information, if disclosed to the public, would constitute the personal data of individuals:
- (i) Can a living individual be identified from the data, or, from the data and other information in the possession of, or likely to come into the possession of, the members of the public?
  - (ii) Does the data 'relate to' the identifiable living individual, whether in personal or family life, business or profession?

22. Clearly names and details of severance payments relate to individuals who could be identified from the data, so the Commissioner was satisfied that they were personal data.

23. The Commissioner then considered whether disclosure would contravene the first data protection principle. The first data protection principle has two main requirements. These are as follows:

- to process all personal data fairly and lawfully;
- to satisfy at least one DPA Schedule 2 condition for processing of all personal data;

24. Both requirements must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing will not be in accordance with the first principle.

## Would disclosure be fair?

25. It is important to note that any disclosure under this Act is disclosure to the public at large and not just to the complainant. If the public authority is prepared to disclose the requested information to the complainant under the Act it should be prepared to disclose the same information to any other person who asks for it.

26. The Tribunal in the case of *Guardian & Brooke v The Information Commissioner & the BBC* (EA/2006/0011 and EA/2006/0013) (following *Hogan and Oxford City Council v The Information Commissioner* (EA/2005/0026 and EA/2005/0030)) confirmed that,

*"Disclosure under FOIA is effectively an unlimited disclosure to the public as a whole, without conditions"* (paragraph 52):

[http://www.informationtribunal.gov.uk/Documents/decisions/guardiannews\\_HBrooke\\_v\\_infocomm.pdf](http://www.informationtribunal.gov.uk/Documents/decisions/guardiannews_HBrooke_v_infocomm.pdf).

27. In considering whether disclosure of this information would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:

- The individuals' reasonable expectation of what would happen to their personal data;
- Whether disclosure would cause any unnecessary or unjustified damage or distress to the individuals; and
- Legitimate interests of the public in knowing about what severance payments have been made by the public authority.

28. The public authority stated that disclosure of the withheld information would be unfair to the data subjects. It does not think that the data subjects would have had a reasonable expectation of the withheld information being released. Instead there was an expectation of confidentiality and privacy. The Commissioner considers that the reasonable expectations are a persuasive factor in indicating that the release of this information would be unfair.

29. The Commissioner's guidance on the application of section 40 suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private lives. Although the guidance acknowledges that there are no hard and fast rules it states that:

*'Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned.'*

30. On the basis of this guidance the Commissioner considers that public sector employees should expect some information about their roles and the decisions they take to be disclosed under the Act. The information requested in this case however is not within this class of information. Instead the Commissioner believes that this information would be expected to be withheld as it connects to those individuals' private lives.
31. The Commissioner believes that there is an expectation that departmental or aggregated figures would be made available to show the overall cost to the public purse. This would enable the scope and severity of the issues for the public authority to be recognised but the numbers would be large enough to ensure that no individual could be directly identified.
32. Having considered the nature of the information the Commissioner is satisfied that the release of it could potentially cause unnecessary and unjustified damage and distress to the individuals in this case.
33. The Commissioner has therefore come to the conclusion that the disclosure of the requested information would be unfair to the data subjects. The main reason for this conclusion is that the legitimate expectations of the individual are that the information would not be made public and the overriding of these expectations cannot be justified in this case. As the release of the information would be unfair, the first data protection principle would be contravened and the information therefore engages the section 40(3)(a)(i) exemption.
34. As the Commissioner has found that disclosure would be unfair and therefore in breach of the first data protection principle there is no need to consider whether the release would also be unlawful, or if the processing of the personal data would meet one of the conditions of Schedule 2 of the DPA. The Commissioner therefore upholds the public authority's application of section 40(2) by virtue of section 40(3)(a)(i).

## The Decision

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35. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

The public authority correctly applied section 40(2) of the Act by virtue of section 40(3)(a)(i).

However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

The public authority was in breach of section 10(1) for failing to provide a refusal notice within 20 working days of the request.

The public authority was in breach of Section 17 (1)b and 17 (1)c as it failed to specify the exact subsection of section 40 the public authority were relying upon.

## Steps Required

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36. The Commissioner requires no steps to be taken.

## Right of Appeal

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37. 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@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

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 17th day of November 2009**

**Signed .....**

**David Smith  
Deputy Commissioner**

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

## Legal Annex

### **The Freedom of Information Act 2000 Section 1(1)** provides that –

“Any person making a request for information to a public authority is entitled – (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and (b) if that is the case, to have that information communicated to him.”

### **Section 1(2)** provides that –

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

### **Section 1(3)** provides that –

“Where a public authority – (a) reasonably requires further information in order to identify and locate the information requested, and (b) has informed the applicant of that requirement, the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

### **Section 10(1)** provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

### **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.”

### **The first data protection principle** provides –

“Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

Reference: FS50169417



Information Commissioner's Office

- (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.