

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

29 June 2010

**Public Authority:** London Borough of Barnet  
**Address:** Corporate Governance Directorate  
Building 4, North London Business Park  
Oakleigh Road South  
London N11 1NP

### Summary

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The complainant requested details of any payments made to a senior employee after he left the council. The Council refused to confirm or deny whether it held information falling within the scope of the request and cited the exemptions under section 40(5)(b)(i) and section 41(2) of the Act. The Commissioner finds that confirming or denying whether the requested information is held would disclose personal data and breach the first data protection principle. Therefore the Commissioner is satisfied that the Council correctly applied section 40(5)(b)(i) of the Act and no further steps are required. As section 40(5)(b)(i) was correctly applied there was no need for the Commissioner to consider section 41(2).

### 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.

### Background

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2. This is one of two cases where the complainant has requested details of any settlement package paid to a senior employee of the council. The other case is subject to a separate Decision Notice under reference FS50275043.

## The Request

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3. On 6 July 2009 the complainant contacted the council by email and stating the following:

*'I have received information suggesting that (name redacted) (received the following payments when his employment with the council was terminated last year:*

*Details redacted*

- 1. Who authorised/approved these payments?*
  - 2. Was member approval required for such payments?*
  - 3. Even if Member approval was not required, was the Leader advised of the payments?*
  - 4. Were these payments reported to the Cabinet Resources Committee or any other council committee and, if so, when?'*
4. The council responded on 15 July 2009 stating that it could not engage in any correspondence regarding any details of staff termination agreements or to confirm whether such alleged agreements existed or not for reasons of data protection and confidentiality. It added that in general, termination agreements were authorised by the head of service/Directors under their delegated powers and member/committee approval was not required.
5. On 16 July 2009 the complainant asked if the termination agreement was authorised by the Head of Paid Service and also whether the Leader and Cabinet Resources Committee (CRC) were advised of the details. He suggested that there must be a requirement to advise the CRC of 'any unexpected expenditure in an outturn report'. He also requested an independent review of the council's refusal of his request once his outstanding questions had been answered.
6. On 24 July 2009 the council sent a further response having reconsidered the request in more detail. It said that in relation to the complainant's four listed questions, it had already given a general answer to question 2. However, in relation to questions 1, 3 and 4 it said it had declined to answer these or to confirm or deny the existence of any agreements for reasons of confidentiality and data protection and specifically because of sections 41(2) and 40(5) of the Act. The council added that the weight of recent Information Commissioner's Office (ICO) decisions was against disclosure of matters relating to compromise agreements. It then referred to the Commissioner's

decisions in the cases of the [City and County of Swansea \(FS50071454\)](#) and the [London Borough of Enfield \(FS50240978\)](#) and the Information Tribunal's decision in [King's College Cambridge EA/2007/0135](#). With regard to the complainant's further queries relating to questions 1, 3 and 4 the council said these were identical or substantially similar requests to the original ones and accordingly they were not going to answer them. With regard to complainant's question as to whether the Cabinet Resources Committee was advised of any payment, the council said it was treating this as a new request.

7. On 24 July 2009 the council answered the complainant's second request by stating that any 'unplanned expenditure over £250,000 must be approved by the Cabinet Resources Committee'.
8. On 31 July 2009 the complainant formally requested an internal review and pointed out that only question 2 of his four supplementary questions had been answered satisfactorily.
9. On 30 September 2009 the council contacted the complainant with the outcome of its internal review which was that the original decision was upheld. It said it refused to confirm or deny whether it held the requested information by relying on sections 40(5) and 41(2) of the Act.

## The Investigation

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### Scope of the case

10. On 14 October 2009 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the legitimate interests of the public in knowing whether and if so how much public money had been paid to a senior manager following their departure from the council.

### Chronology

11. On 16 and 25 November 2009 the Commissioner wrote to the council confirming that it was investigating the complaint and requested details of any information in the public domain concerning any payments which may have been made to (name redacted) and consequently any reference to them in the council's annual accounts.
12. The council responded on 15 January 2010 stating that if any payments were made (which was not admitted) they would (in general terms) be

fully recorded and accounted for in the annual accounts in accordance with the Statement of Recommended Practice (SORP).

## Findings of fact

13. (Name redacted) left the council in or about December 2008/January 2009.

## Analysis

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### Exemptions

#### Section 40(5)(b)(i)

14. A full text of section 40(5) may be found in the attached legal annex.
15. Section 40(5)(b)(i) provides that a public authority is not obliged to confirm or deny whether requested information is held if to do so would:
  - a. constitute a disclosure of personal data, and
  - b. breach any of the data protection principles or section 10 of the Data Protection Act 1998 (DPA).
16. The Commissioner will now address each of these points in turn.

#### **Would confirming or denying whether the information is held reveal the personal data of the data subject?**

17. Personal data is defined by section 1(1) of the DPA. It 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 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'.
18. The complainant has requested very specific information relating to payments made to a named individual at the council. The council's response was that confirming or denying whether information falling within the scope of the request was held would disclose whether the named council employee had actually received any payment and if so give an indication as to how much.

19. The Commissioner is satisfied that confirming or denying whether the requested information is held will reveal information regarding the circumstances under which the named individual left the council and therefore reveal their personal data. Confirming or denying would also unavoidably disclose whether any payments had been made and if so give an indication as to how much.

**Would disclosure of this personal data be unfair and in breach of the first data protection principle?**

20. The council has specified that the first data protection principle in Schedule 1 Part 1 of the DPA would be breached if this personal data was disclosed.
21. Part 1 in Schedule 1 of the DPA states that personal data shall be processed fairly and lawfully and in particular shall not be processed unless at least one of the conditions in Schedule 2 is met.
22. The Commissioner has considered various factors in deciding whether disclosure of the personal data would be unfair and contravene the first data protection principle. These are set out in the confidential annex.
23. The Commissioner takes the view that in the absence of exceptional factors (e.g. fraud, maladministration or bad practice) disclosure of the circumstances under which someone leaves a public organisation is unfair. As there are no exceptional circumstances in this case, the Commissioner's decision is that disclosure of the requested information would be unfair.
24. The conclusion of the Commissioner is that the exemption from the duty to confirm or deny provided by section 40(5)(b)(i) is engaged. In making this decision the Commissioner has first concluded that confirming or denying that the requested information is held would constitute a disclosure of personal data. The Commissioner considers that it is clear that confirming or denying whether a named individual received a severance package would disclose information that could be linked to an identifiable individual.
25. Secondly, the Commissioner concludes that disclosure of this personal data would be unfair and thus breach the first data protection principle. In making this decision, the Commissioner has balanced the lack of expectation on the part of the individual named in the request that this information would be disclosed and the potential for detriment as a result of disclosure against the arguments that the council should demonstrate transparency and accountability for any decisions it may

make. The Commissioner has noted the council's statement that if any payments were made (which is not admitted) they would (in general terms) be fully recorded and accounted for in the annual accounts in accordance with the Statement of Recommended Practice (SORP). The SORP specifies the principles and practices of accounting required to prepare a Statement of Accounts which 'presents fairly' the financial position and transactions of a local authority.

26. As the Commissioner has concluded that section 40(5)(b)(i) of the Act is engaged he has not found necessary to consider the council's application of section 41(2).

### **The Decision**

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27. The Commissioner's decision is that the council responded to the request for information in accordance with the Act in that the exemption from the duty to confirm or deny provided by section 40(5)(b)(i) is engaged.

### **Steps Required**

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28. The Commissioner requires no steps to be taken.

## Right of Appeal

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29. 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,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

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 sent.

**Dated the 29<sup>th</sup> day of June 2010**

**Signed .....**

**David Smith  
Deputy Commissioner**

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

## Legal Annex

### Freedom of Information Act 2000

#### Section 40

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) he 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).”

#### Data Protection Act 1998

Section 1(1) provides 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 provides that –

“Personal data shall be processed fairly and lawfully...”