

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 17 March 2011

**Public Authority:** Cardinham Parish Council  
**Address:** Glentana  
Cardinham  
Bodmin  
PL30 4BZ

#### Summary

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The complainant requested information in respect of an investigation into certain allegations. The Council refused to provide the information citing section 40(2) of the Act. The Commissioner has investigated and finds that the Council correctly applied section 40(2) of the Act. However, the Commissioner also finds the Council breached section 17(1)(b) of the Act in its handling of the request for information.

#### 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 24 May 2010 the complainant requested the following information from Cardinham Parish Council (the "Council"):

*"Please send me a copy of the [...] complete deliberations and reports, which led to the recommendations presented to, CPC's closed session of 18 May which resolved to 'receive and approve' them"*

3. On 26 May 2010 the Council informed the complainant that it was refusing to provide the information on the basis that it related to the

personal data of someone other than the complainant. However, it did not cite the relevant (or any) exemption and failed to give the complainant details of the rights conferred under section 50 of the Act.

4. On 5 June 2010 the complainant contacted the Commissioner to complain about the Council's handling of his request for information. The Commissioner contacted the Council on 13 July 2010 instructing it to either issue a compliant refusal notice or provide the information.
5. On 16 July 2010 the Council sent a further letter to the complainant upholding its original decision but citing section 40 of the Act. It also provided details of the complainant's rights under section 50 of the Act although it did not include the Commissioner's address.

## **The Investigation**

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### **Scope of the case**

6. On 26 July 2010 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 following points:
  - The Council's application of the section 40 exemption.
  - The Council's failure to have adopted an internal review process.
7. During the course of the Commissioner's investigation the following matters were resolved informally and therefore these are not addressed in this Notice:
  - The closed session minutes for December 2009 to 20 April 2010 were disclosed to the complainant as they related to the process of the investigation itself rather than the outcome of the investigation.
8. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

### **Chronology**

9. On 2 August 2010 the Commissioner notified the Council that he had received a complaint regarding the Council's handling of the request for information. The Commissioner requested a copy of the withheld information to assist with his investigation.
10. On 5 August 2010 the Council provided some of the withheld information to the Commissioner. The Commissioner therefore contacted

the Council on 13 September 2010 to request the outstanding information necessary to complete a thorough investigation of the complaint. He also highlighted the requirement for the Council to specify the relevant sub-section within the exemption it was relying on.

11. The Council provided a full response to the Commissioner's letter on 28 September 2010. It confirmed that it was relying on section 40(2) of the Act and provided the Commissioner with copies of withheld information not previously received.
12. As a copy of a report remained outstanding, the Commissioner sent a further letter to the Council on 5 October 2010. The Council provided a response on 6 October 2010.
13. The Commissioner contacted the Council again on 15 October 2010 with queries regarding possible outstanding withheld information and with a preliminary view regarding his investigation. The Council provided a substantive response on 5 November 2010.
14. Having considered the Council's response, its enclosures and further correspondence from the complainant, the Commissioner contacted the Council on 1 February 2011. As they referred to the process of the investigation rather than its outcome, the Commissioner asked the Council to consider disclosing the closed session minutes from December 2009 to April 2010.
15. On 24 February 2011 the Commissioner received a letter from the Council confirming that it had now disclosed the closed session minutes to the complainant.
16. The Commissioner attempted to close this complaint informally but on 1 March 2011 the complainant requested a formal decision notice.

## **Analysis**

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### **Exemptions**

17. The full text of all sections of the Act referred to in this notice is available in the Legal Annex at the end of this Notice.
18. Section 40(2) of the Act states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the Act would breach any of the data protection principles.

19. In its letter to the complainant dated 16 July 2010 the Council argued that the requested information was exempt from disclosure as it was personal information within the terms of the Data Protection Act 1998.
20. In order to reach a view regarding the Council's application of this exemption, the Commissioner firstly considered whether or not the requested information was in fact personal data.

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

21. Personal data is defined at section 1(1) of the Data Protection Act 1998 (the "DPA") as:

*"personal data means data which relate to a living individual who can be identified-*

- (a) from those data,*
- (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."*

22. When considering whether the information is personal data, the Commissioner had regard to his own published guidance: "*Determining what is personal data*".<sup>1</sup>

23. Taking into account his guidance on this matter, there are two questions that need to be considered when deciding whether disclosure of information into the public domain would constitute the disclosure of personal data:

- (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?"*

24. The Commissioner considers that the requested information does fulfill the above criteria and therefore constitutes personal data. The

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[http://www.ico.gov.uk/upload/documents/library/data\\_protection/detailed\\_specialist\\_guides/what\\_is\\_data\\_for\\_the\\_purposes\\_of\\_the\\_dpa.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/what_is_data_for_the_purposes_of_the_dpa.pdf)

Commissioner has therefore considered whether disclosure of the information would contravene the first data protection principle.

25. The Council did not provide details of the specific data protection principle that would be breached through disclosure but the Commissioner considered the first principle to be the most relevant in this case.

**Would disclosure contravene the first data protection principle?**

26. The first data protection principle requires that the processing of personal data be fair and lawful and,
- at least one of the conditions in schedule 2 is met, and
  - in the case of sensitive personal data, at least one of the conditions in schedule 3 is met.
27. In the case of personal data, both requirements (fair and lawful processing and a schedule 2 condition) 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 data principle.

*Would disclosure be fair and lawful?*

28. In considering whether disclosure of the withheld information would comply with the first data protection principle, the Commissioner has firstly considered whether disclosure would be fair. In assessing fairness, the Commissioner has considered the reasonable expectations of the data subject and the consequences of disclosure. He has then balanced against these the general principles of transparency and accountability as well as any legitimate public interest in disclosure.
29. For reasons of confidentiality, the arguments in respect of each of these aspects have been discussed in the confidential annex attached to this notice.
30. In summary, and taking into account the arguments as outlined in his confidential annex, the Commissioner has determined that disclosure of the withheld information would constitute the disclosure of personal data and that disclosure would not be fair. In the Commissioner's view, disclosure would breach the first data protection principle. He therefore upholds the Council's application of the exemption at section 40.

## **Procedural Requirements**

### **Section 17 – Refusal of the request**

31. Section 17(1)(b) states that where a public authority is refusing to provide the requested information it must specify the exemption(s) in question. The Council's failure to cite the relevant sub-section of section 40 therefore represents a breach of section 17(1)(b) of the Act.

## **The Decision**

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32. 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 Council correctly withheld the requested information under section 40(2) of the Act.

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

- It breached section 17(1)(b) for failing to cite a sub-section in relation to section 40 of the Act.

## **Steps Required**

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34. The Commissioner requires no steps to be taken.

## **Other matters**

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35. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

### **Failure to adopt an internal complaints procedure**

36. The Section 45 Code of Conduct outlines the best practice for public authorities handling requests for information. Section VI provides guidance for public authorities in respect of its complaints procedure. It states:

*"Each public authority should have a procedure in place for dealing with complaints both in relation to its handling of requests for information.*

*The same procedure could also usefully handle complaints in relation to the authority's publication scheme.*

37. However, the Commissioner notes that the Council does not have an internal complaints procedure. Whilst the Commissioner is mindful of the demands placed on small first-tier councils, he recommends that, if practical, the Council implements a complaints procedure as outlined in the Section 45 Code of Practice.

## Right of Appeal

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38. 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: 0300 1234504

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)

39. 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.
40. 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 17th day of March 2011**

**Signed .....**

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



## **Legal Annex**

### **General Right of Access**

#### **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."

#### **Refusal of request**

#### **Section 17(1) provides that -**

"A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies."

#### **Personal information**

#### **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."

#### **The Data Protection Act 1998**

The first 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.