

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 31 October 2011

**Public Authority:** Swale Borough Council  
**Address:** Swale House  
East Street  
Sittingbourne  
Kent  
ME10 3HT

#### Decision (including any steps ordered)

---

1. The complainant requested the professional or other qualifications held by the individual holding the post of Design and Conservation Manager at Swale Borough Council (the Council). The Council informed the complainant of the nature of qualifications that the post holder had to have in order to be appointed to the post and confirmed that the individual currently holding the post met these requirements. However, it refused to provide the complainant with details of the exact qualifications of the post holder.
2. The Commissioner's decision is that the Council was entitled to withhold this information on the basis that its disclosure would breach the Data Protection Act and thus the information was exempt from disclosure under FOIA by virtue of the personal data exemption.

#### Request and response

---

3. On 24 January 2011 the complainant wrote to the Council and requested information in the following terms:

*'I am sorry to be troubling you yet again, but I would be most grateful if you would let me know the professional or other qualifications held by the holder of the post which I believe is designated Conservation Officer or Manager of conservation and design team.'*

4. The Council responded on 11 February 2011 and explained that the post of Design and Conservation Manager requires the post holder to hold an appropriate qualification at degree level (e.g. Architecture, Building Conservation or Urban Design) and membership of an appropriate professional body (e.g. RIBA, RTPI or IHBC). The Council confirmed that the current post holder met these requirements.
5. The complainant contacted the Council on the same day and explained that he had specifically asked for the qualifications of the current holder of the post in question not the qualifications it was considered desirable for the post holder to have.
6. The Council contacted the complainant again on 17 March 2011 and explained that it considered the actual qualifications of post holders to be the individuals' personal information and exempt from disclosure under section 40 of FOIA.
7. On 18 March 2011 the complainant contacted the Council and asked it to reconsider its decision.
8. The Council responded on 21 March 2011 and confirmed that it remained of the view that the actual qualifications of the individual in question were exempt from disclosure on the basis of section 40.

### **Scope of the case**

---

9. On 29 May 2011 the complainant contacted the Commissioner to complain about the decision to withhold the information he had requested. He provided a number of reasons to support his position that the information was not exempt from disclosure. The Commissioner has made reference to these submissions below.

### **Reasons for decision**

---

10. Section 40(2) of FOIA states that personal data is exempt from disclosure if its disclosure would breach any of the data protection principles contained within the Data Protection Act (the DPA). The Council has argued that disclosure of the requested information would be unfair and thus breach the first data protection principle which 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.'

11. Clearly then for section 40(2) to be engaged the information being withheld has to constitute 'personal data' which is defined by the DPA 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,

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

12. The Commissioner is satisfied that the individual's qualifications which are the focus of this request clearly constitute his personal data as he can be identified from them.

13. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:

- The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
  - what the public authority may have told them about what would happen to their personal data;
  - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights;
  - the nature or content of the information itself;
  - the circumstances in which the personal data was obtained;
  - particular circumstances of the case, e.g. established custom or practice within the public authority; and
  - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
- The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:

- whether information of the nature requested is already in the public domain;
  - if so the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?
14. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure.
15. In considering 'legitimate interests' in order to establish if there is such a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach, i.e. it may still be possible to meet the legitimate interest by only disclosing some of the requested information rather than viewing the disclosure as an all or nothing matter.

*The Council's position*

16. The Council explained that when individuals apply for a position with the Council the information they supply relating to evidence of their qualifications is provided in confidence. Therefore the complainant argued that the post holder in question would have had a reasonable expectation that details of his actual qualifications would not be disclosed.
17. The Council acknowledged that it was in the public interest that its officers have the necessary qualifications and expertise to carry out their role. However, it did not believe that it was in the public interest for the exact qualifications of individual officers to be made public. Rather it believed that the public interest was met by its responses to the complainant, namely explaining the qualifications required for the post in question and confirmation that the current post holder met these requirements.

*The complainant's position*

18. The complainant argued that the professional qualifications of officers who advise council members and members of the public are a matter of public interest. It is important that when a member of the public, or a councillor, seeks advice on conservation, or any other matter, from a

council officer they know the qualifications of the officer concerned and can judge the weight to be given to the opinions expressed.

19. The complainant also argued that professional qualifications are a matter of public record. He gave the example of chartered architects whose qualifications and details are freely available on the Royal Institute of British Architects' website. Similarly, the complainant also referred to the 'Gas Safe Register' website which includes details of suitably qualified engineers together with the type of work each engineer is qualified to undertake.

*The Commissioner's position*

20. The Commissioner agrees with the Council that the post holder would have had a clear expectation that details of his qualifications would not be disclosed given that they were provided to the Council on the understanding that they would be treated confidentially. In such circumstances the Commissioner accepts that such an expectation is a reasonable one. Nevertheless the Commissioner believes that the damage or distress that would be caused to the individual if the information was disclosed would be relatively minimal. This is because disclosure would simply confirm the nature of his qualifications and which professional body he is a member of. In the Commissioner's opinion disclosure of such information would not necessarily represent a significant infringement into the individual's private life.
21. However, the Commissioner does not agree with the complainant that there is a compelling public interest in disclosure of the requested information. Whilst the Commissioner agrees that it is important for members of the public, and indeed council members, to be able to trust the advice they receive from council officials he does not believe that it is necessary to know the exact qualifications of the officials in question in order to have faith in their advice. Rather, the Commissioner believes that the information disclosed by the Council to date should, from an objective view point, provide sufficient reassurance to the public of the ability of the post holder to perform his role. Indeed the Commissioner is not convinced that the public interest would be well served by members of the public conducting their own assessment of the value of the advice provided by a council official based on their views as to the merits of the official's qualifications. In the Commissioner's opinion the ability of a council to deliver effective services to the community would be hampered if some members of the public disputed decisions made by the council not because of the outcome of a particular decision but because of the qualifications of the individual who made the decision.

22. Furthermore, the Commissioner does not agree with the complainant's suggestion that professional qualifications are a matter of public record. Although the Commissioner acknowledges that the two examples quoted by the complainant are ones where the professional qualifications of individuals in those professions are made publically available it does not follow the professional qualifications in other professions are, or should, be considered a matter of public record. In the Commissioner's opinion there is a significant difference between the qualifications, and by implication the ability, of an individual to undertake work on gas appliances in people's homes and the qualifications of a council employee whose role involves dealing with conservation matters. Indeed in the case of gas engineers it is in fact a legal requirement that such individuals are on the Gas Safety Register.
23. In conclusion, despite the fact that disclosure may not cause the individual who holds the post in question a huge degree of damage or distress, the Commissioner accepts that given the strong expectations in relation to how the Council would treat such information, disclosure of the requested information would be unfair. In reaching this conclusion the Commissioner is also satisfied that there is not a compelling public interest in disclosure of the requested information; this is because the information already provided to the complainant sufficiently meets any legitimate interests in knowing how the post holder is qualified to undertake the role of Design and Conservation Manager.

## Right of appeal

---

24. 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,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

25. 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.
26. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Signed** .....

**Alexander Ganotis**  
**Group Manager – Complaints Resolution**  
**Information Commissioner’s Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**