

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 13 December 2011

**Public Authority:** Middlesbrough Borough Council  
**Address:** PO Box 500  
Middlesbrough  
TS1 9FT

#### Decision (including any steps ordered)

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1. The complainant requested a copy of CCTV footage held by Middlesbrough Council ("the council"). The council initially indicated that the complainant could inspect the information by appointment. It subsequently said that the information could not be made available because it was exempt under an exemption relating to personal information.
2. The Commissioner's decision is that the council correctly applied the exemption relating to personal information under the Freedom of Information Act 2000 ("the FOIA"). He requires no steps to be taken.

#### Request and response

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3. On 19 July 2011, the complainant requested information from the council in the following terms:

*"Could I request a copy of the full video shown at the recent standards hearing.*

*Not the You Tube version.*

*As this now is public knowledge material and viewed by members of the public at the hearing, I feel it can be made available".*

4. The council emailed its response to the complainant on 29 July 2011 (although the complainant did not receive this until a later date when it was resent). The council said that it was willing to allow the complainant to inspect the information by appointment.

5. The complainant requested an internal review on 15 August 2011 as he was not satisfied with the offer to allow him to inspect the information.
6. The council completed its internal review on 26 August 2011. The council said that having reviewed the matter, it had decided that it could not disclose the information because it was exempt under section 40(2) of the FOIA.

## Scope of the case

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7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He asked the Commissioner to consider whether the council had correctly refused to provide the information that he had requested.

## Background

8. In 2005, the council took the unusual step of installing CCTV equipment at a councillor's home. Restrictions were placed on the use of the footage, in particular, that no images could be released to anyone other than to the police and certain council officers. The council received a complaint about the councillor's use of footage taken from the CCTV equipment and was provided with a copy of the relevant footage. This subsequently led to a public Standards Committee hearing. Edited footage was also uploaded onto You Tube with associated commentary as a result of the councillor giving a documentary film maker access to the images. The footage that is on You Tube appears to have been recorded while the images were playing on the councillor's television.

## Reasons for decision

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### **Should the information be disclosed because it has previously been shown to the public?**

9. Before considering the application of the exemption, the Commissioner would firstly like to address an issue raised by the complainant about whether the information should be disclosed because it had already been put into the "public domain". The complainant has pointed to the fact that the footage was shown to the public at the Standards Committee hearing and there is edited footage on You Tube.
10. The council has argued that making the information available as part of the Standards Committee hearing for a specific purpose (i.e. considering whether the councillor had breached the Code of Conduct) is very different from making a permanent copy of the information available at all other times. It has also explained that the You Tube

footage involves short extracts taken from the original CCTV footage and that it is of poorer quality. It said that the original footage is much longer and contains additional images of identifiable people.

11. On this occasion, the Commissioner agrees with the council. It is clear that the footage was shown for a limited time in very specific circumstances. This is very different from the council making a permanent and unedited copy available under the FOIA. The footage is also not the same as the edited and poorer quality images shown on You Tube.

12. **Section 40(2) – Third party personal data**

This exemption provides that third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act 1998 ("the DPA").

**Is the withheld information personal data?**

13. Personal data is defined by the DPA as any information relating to a living and identifiable individual. The council explained to the Commissioner that the footage captures images of people who can be identified. The Commissioner has viewed the footage and he accepts that the images represent the personal data of the individuals shown on the film.

**Would disclosure breach the Data Protection Principles?**

14. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

**Reasonable expectations**

15. The people recorded on the film appear not to have been aware that they were being recorded and even if they had been aware, the Commissioner believes that there would not have been any reasonable expectation that the images would be disclosed to the public in a permanent form under the FOIA.

**Consequences of disclosure**

16. The council said that given the circumstances, the disclosure of the footage under the FOIA in a permanent form would be likely to cause

distress. It also expressed particular concerns about the subsequent use to which the footage could be put.

17. The Commissioner notes that some footage is on You Tube and has therefore considered the possibility that the likelihood of additional distressing effects has been reduced for some individuals because of this earlier public disclosure. Nevertheless, the Commissioner appreciates that the footage in issue is a longer and better quality version and its release may well generate further interest in the matter which is likely to cause distress to those concerned. The Commissioner also notes that because the footage is longer and more detailed, other individuals may be identifiable which were not identifiable in the edited You Tube version. This disclosure is likely to be distressing.

### **Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure**

18. The Commissioner has no difficulty in determining that on this occasion, the rights and freedoms of the data subjects outweigh the legitimate interests in disclosure. While there is always some public interest in public authorities being transparent, it is clear that the council had followed the proper process for dealing with the complaint received about the use of the footage and the resultant hearing took place in a public setting. Therefore, the Commissioner's view is that the council has already been sufficiently transparent about the issues involved and it would be disproportionate to make a permanent copy available. The Commissioner is therefore satisfied that the disclosure would not be fair in the circumstances and that section 40(2) was therefore engaged.

## Right of appeal

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19. 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@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)

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.

**Signed** .....

**Gerrard Tracey**  
**Principal Policy Advisor**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**