

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 February 2012

Public Authority: Cheshire West and Chester Council

Address: Freedom of Information
Country Hall
Chester
Cheshire
CH1 1RL

Decision (including any steps ordered)

1. The complainant has requested copies of declaration of interests for senior officers at the council. The council initially withheld the information under section 22 because it stated that it intended to publish the information at some point in the future. On review however it decided that that had only been decided after the request was received and so section 22 could not apply. The council therefore disclosed some sections of the information but withheld other information because it was the personal data of its officers and its disclosure would breach the principles of the Data Protection Act 1998. It therefore applied the exemption in section 40(2) of the Act.
2. The council also asked the complainant to clarify some of the information he requested. It was however unable to establish what information the complainant wished, in spite of the complainant trying to clarify what information he wanted.
3. The Commissioner's decision is that Cheshire West and Chester Council was correct to apply the exemption in section 40(2) to the information which it redacted.

Request and response

4. On 24 June 2011 the complainant wrote to the council and requested information in the following terms:

"Please forward a full and comprehensive list of the names and interests of council officers as follows:

The Chief Executive, his direct reports and the direct reports of these senior officers. Please include the heads of department and those such as senior planning officer. Anyone who has delegated authority from members should also be declared.

Please provide any and all personal interests they have, such as ownership of property, family associations, business interests, shareholdings and membership of organisations that may conflict with their decision-making role. Such a list would run along similar lines to the one you currently display for Cheshire West and Chester's councillors, and would I suggest be available for inspection on the website, and personally at the Town Hall in the near future.

Please make the list retrospective for the last 5 years, in order that the public can examine the decisions made, the officers involved and check against the list of interests at that particular time. Any conflict can then be highlighted and acted upon as required, in the public interest,"

5. The council responded on 24 June 2011. It stated that the information was exempt under section 22 of the Act (information intended for future publication). It also stated that in respect of some elements of his request that it did not understand his request and asked him to clarify the information he was requesting.
6. The complainant therefore wrote back to the council on 22 July 2011 clarifying some aspects of his request.
7. Following an internal review the council wrote to the complainant on 4 October 2011. The review found that the exemption in section 22 of the Act was not applicable as the council could not demonstrate that a decision had been taken to publish the information prior to the request for information being received.
8. The review asked for a further clarification of some aspects of the complainant's request; however it disclosed information relating to council officers within tiers 1 – 3. Tiers 1 – 3 are the most senior officers within the council. Within the disclosed information some sections, most notably the signatures of the officers was redacted, however the names and grades of the officers concerned were not.
9. The council asked the complainant to clarify the following aspects of his request:

- In respect of the part of the request *"Anyone who has delegated authority from members should also be declared"*. [The complainant] is requested to clarify the extent of this request, and in particular state the grade or description of officer to whom this part of the request is aimed.

It pointed out that many officers have powers delegated to them to carry out work or make decisions on behalf of the council, and that many of these are not senior officers.

- In respect of the part of the request *"any separate instance where a sitting councillor asks or orders a council officer to carry out a specific task that may escape normal scrutiny and be beyond generally delegated powers"*. It asked the complainant to provide specific details of instances of which he is aware, which the council could then investigate. It stated that as it stood, it was aware of none.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He argues that the disclosure is not in line with the Commissioner's decision in his decision notice in case FS 50359348 (Bolton Metropolitan Borough Council).
11. The Commissioner considers that the disclosure which was made to the complainant encompassed tiers 1- 3 at the council. As regards the request for further clarification provided in paragraph 9 above the Commissioner understands that for the first point it was asking which grades the complainant wished disclosed because large numbers of staff have delegated powers. As regards the second point it did not know of any specific individuals or instances which fell within the scope of the request, and so without further clarification its response was that no information is held.
12. Although the complainant did try to clarify his request in this respect the council has been unable to establish exactly what information is being requested by the complainant. It has therefore been unable to provide a response to those sections of the request. It has written to the complainant asking him to clarify further what information he wishes. It has not however received a response which has allowed it to identify the information which the complainant wishes. The Commissioner is therefore satisfied that the council has complied with its obligations to provide help and assistance to a complainant with formulating his request. It has not however been able to establish what information is being requested.

13. The Commissioner has therefore limited his investigation to whether the redactions made for the information on tiers 1 – 3 which were disclosed to the complainant were correct or not.
14. The Commissioner wrote to the council asking it to clarify what information was withheld. It had provided the Commissioner with information wherein the signatures had been redacted but it was not clear what, if any, further information had been withheld from disclosure.
15. The council confirmed that all that had been withheld were signatures and the name of a relation of an officer who works for a different council. It confirmed that there was no conflict of interest in regards to this interest.

Reasons for decision

16. Section 40(2) of the Act states that information will be exempt where the information is the personal data of a third party and a disclosure of that information would breach one of the principles of the Data Protection Act.
17. The first question is therefore whether the information in question is the personal data belonging to third parties.

Is the information personal data?

18. The complainant made a number of requests seeking the statements of personal interests of council officers. This information identifies who they are and what interests they have outside of their working lives which might conflict with decisions their need to take in their jobs.
19. Section 1 of the DPA defines personal data as data which relate to a living individual who can be identified:
 - from those data, or
 - from those data and other information which is in the possession of, or is likely to come into the possession of the data controller.

The Commissioner is therefore satisfied that the information is personal data relating to senior officers at the council.

Would a disclosure breach a data protection principle?

20. There are eight data protection principles. For the purposes of this case the relevant principle is the first data protection principle. This requires (amongst other things) that where personal data is processed (i.e. in this case disclosed) that that the processing is fair and lawful.

Would disclosure be "fair"

21. The fairness requirement means that generally, (but not always) individuals would have an expectation that their information would be processed in a particular way, either because it would be reasonably obvious that that would be the case, or because the data processor (i.e. in this case the council) told the individual that their information would be processed in that way at the time that the information was obtained. Alternatively other reasons, such as a compelling reason for disclosure, will apply which will make disclosure fair.
22. Statements of interest are statements made to the council by its officers, clarifying where their interests within their personal lives which may impact or conflict with duties they may be required to carry out as part of their position within the council. Declaring their interest in this way ensures that where decisions are taken, officers who are chosen to take that decision do not have a personal interest in the outcome of the decision.
23. The Commissioner notes that the information contains specific details about senior officer's private lives which in many cases may never be relevant to their activities in public life. The information will only be relevant where council decisions could be affected by their personal interests, or could be seen to be affected by their personal interests. The declaration ensures that in such cases they can be excluded from making that decision or having an influence over it.
24. The information provides an insight into the individual's and their family's private interests. It may provide details of their homes, their membership of associations, private businesses which they or their family have links with and membership of sporting clubs or associations which they have joined. It may also provide details of where their families work if this might prove a point of conflict with decisions which they might take in their working lives.
25. Following the Commissioner's decision in the Bolton case (available at, http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs_50359348.ashx). The Commissioner is satisfied that a disclosure of some level of information is warranted where senior officers are concerned. Their decisions do impact on the spending of public money or the

services which are provided to the community through the council. There must therefore be some expectation by senior officers that information which the council holds about them which impacts on the decisions they take will be made public in order to demonstrate that the councils decisions are taken fairly and that there are not 'hidden' or undesirable reasons for particular decisions.

26. A disclosure of some of the information provides transparency which creates greater trust in the decisions made by the council. The individuals should therefore hold an expectation that some of the information they provide would be disclosed where it would allow the public a greater level of scrutiny of the decisions which are taken.
27. However in the Bolton case the Commissioner also took into account the fact that the information can also include home addresses of individuals, or of individuals related to the officer concerned. Where such information is disclosed this could cause particular distress to the individuals as it would allow potentially angry or disaffected members of the community access to information which would allow them to track, find or contact the individual outside of the safety of the work environment. Even if that never occurs, the disclosure would cause feelings of insecurity and cause distress to the officer concerned.
28. The Commissioner is satisfied that for that type of information there would be no expectation the information would be disclosed 'globally' as is envisaged by the Act. Therefore the Commissioner is satisfied that it would be unfair for that level of information to be disclosed.
29. Whilst the Commissioner recognises strong reasons why all information submitted within the declaration of interest should be disclosed he considers that when considering information of this type those reasons are not strong enough to make the disclosure of that information 'fair' for the purposes of the Act.

Should the council have obtained further information from its senior officers?

30. Unlike the Bolton case, the information held by the council in this case is not as substantial or as detailed as the withheld information in that case. The complainant has argued that the information should match that collected from officers in the Bolton case and has stated to both the Commissioner and the council that the council should therefore obtain the same level of information and disclose this to him.
31. The Commissioner is satisfied however that under the Act the council is not required to create new information in order to meet the requirements of the complainant. If it does not hold that information then it is under no duty to obtain it from officers in order to respond to

the request. The Commissioner is therefore satisfied that the Act does not oblige the council to seek further information in this way.

32. The complainant has stated to the Commissioner that the council would be under a duty to collect that information in order to meet the legal requirements under which it works. The Commissioner does not know whether this is correct or not, however if the information is not held then it is under no duty under the Act to then obtain it simply to respond to the request. It is therefore correct to state that that information is not held. If it is under a duty under other legislation to hold that information then the complainant may be able to make a complaint to the regulator of that legislation that the council is not abiding by its requirements. This is not a matter for the Commissioner.

Council officers signatures

33. The Commissioner has considered the redaction of the signatures from the forms submitted to the council by officers. The names and the roles of the officers have been disclosed however.
34. The Act provides access to information rather than documents. The Commissioner considers that the redaction of the actual signatures does not reduce in any way the actual level of information which has been disclosed. He therefore considers that the redaction is appropriate and that information has not been 'withheld' in any particular sense for the purposes of the Act.

The deletion of the name of the officers relation

35. One name has been redacted which is of a relation to an officer in the council who works for another council. The Commissioner is satisfied that the disclosure of the name of an officer who works for another council would be a breach of the first data protection principle as it would not be fair and would not be necessary under the circumstances of the case. The relation is not a senior employee at the other authority and would have no expectation that their details would be disclosed as part of a freedom of information request to another, different authority. Were the individual to have been working at this council the individual's information would not have been caught by this request as she is not senior enough to have been caught within the scope of the disclosure.

Right of appeal

36. 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

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

37. 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.
38. 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
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