

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 August 2012

Public Authority: West Berkshire Council
Address: Council Offices
Newbury
Market Street
RG14 5LD

Decision (including any steps ordered)

1. The complainant requested copies of the original authorised expense claims for the Chief Executive from April 2010 to March 2011. The council directed the complainant to a table on the Whatdotheyknow website disclosing information from the expense claims and said that this was all of the information which it could disclose from the forms as the remainder was exempt under section 40 (personal data). It therefore applied section 21 to the information (information which is reasonably accessible to the requestor by means other than through a freedom of information request). The complainant however argued that he wanted copies of the actual expense claim forms themselves.
2. The Commissioner's decision is that the council was not correct to apply section 40 to most of the information which it withheld from disclosure. He has however decided that a small amount of information is personal data which is exempt under section 40 of the Act.
3. The Commissioner has also decided that section 21 of the Act was applicable to the information which had been previously been published on the whatdotheyknow website. However not all of the information was published on the site. Hence not all of the relevant information has been disclosed and section 21 is not applicable to this remaining information.
4. The Commissioner has therefore decided that West Berkshire Council breached section 1(1)(b) of the Act in that it failed to disclose information which should have been disclosed in response to the request.

5. The Commissioner has also decided that although the complainant asked for copies of the actual forms, the council did not breach section 11(1)(b) because the Act does not require it to disclose copies of documents themselves. However the Commissioner highlighted that the form and format of the forms is information in itself, and this has not been disclosed in the tables published on the whatdotheyknow website. He therefore requires the council to disclose this information to the complainant in addition to the information which he has decided is not exempt under section 40.
6. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - To disclose the information held on the forms other than the information which the Commissioner has found is exempt under section 40 of the Act.
7. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

8. On 7 November 2011 the complainant wrote to West Berkshire Council and requested information in the following terms:

"Under the FoI I wish to see copies of the original authorised expense claims for the Chief Executive from April 2010 to March 2011."
9. The council responded on 24 November 2011. It stated that a table containing the information had been published on the whatdotheyknow website and that it was clear from the complainant's previous correspondence that he had viewed this information. It also said that the table held all publishable information from the forms. Other information on the forms was exempt from disclosure on the basis that section 40 applies. It is personal data belonging to the Chief Executive and others which would be unfair to disclose for the purposes of the first data protection principle of the Data Protection Act 1998 (DPA).
10. Following an internal review the council wrote to the complainant on 19 December 2011. It stated that the information held in the tables was an accurate representation of the information held in the forms (other than the information which was withheld under section 40), and that the

request was therefore refused under section 21 of the Act (information available by other means).

Scope of the case

11. The complainant contacted the Commissioner to complain about the way his request for information had been handled. In his view actual copies of the expense claim forms should have been disclosed in response to his request.

Reasons for decision

Section 21

12. Section 21 of the Act states that information will be exempt from disclosure where it is *"reasonably accessible to the applicant otherwise than under section 1."* In other words, if a requestor could obtain the same information quite easily without making a freedom of information request then the information will be exempt from disclosure under Act.
13. In this case the council noted that the complainant had had access to information which had already been published on the whatdotheyknow website by a previous complainant. This was due to previous correspondence it had had with the complainant about information held in the tables.
14. The council provided the Commissioner with copies of the expense claim forms themselves, but said it was not willing to disclose these copies to the complainant. In its view all of the discloseable information contained in the forms has already been disclosed on the whatdotheyknow website. Other sections were exempt under section 40(2) of the Act (personal data of a third party). The complainant had however requested copies of the actual documents themselves.
15. The Commissioner notes that not all of the information held within the forms is therefore held within the tables. The Commissioner must therefore consider whether the information which is not contained within the forms is exempt under section 40 of the Act as the council claim. If there is information in the forms which is not exempt under section 40 then the council's application of section 21 would be incorrect because not all of the information was accessible to the complainant through the whatdotheyknow website.

16. Finally, if section 21 cannot be applied, the Commissioner will consider whether it is reasonable for the public authority to give effect to the applicant's preference for a copy of the requested information.

Section 40

17. The tables published on the whatdotheyknow website contain information on miles travelled, miles claimed and amounts paid, the date that the expense was made. They also provide a description of the starting place and the destination and/or the purpose of the journey.
18. The column for miles travelled is a separate column to the miles claimed. The table on the whatdotheyknow website does not contain this information. The Commissioner pointed this out to the council and it agreed that this information can be disclosed and its version of the table can be updated. The Commissioner is therefore satisfied that in this respect the council was not correct to claim section 21 for this information. This information was discloseable but was not reasonably accessible to the complainant by other means, such as the table on the whatdotheyknow website. Additionally the council has decided not to apply an exemption to this information.
19. The Commissioner considers that there is a legitimate interest in that information being disclosed and that it would be fair to the Chief Executive under the circumstances of this case. Given the importance of the information in establishing whether the calculations are correct he also considers that its disclosure is necessary for the legitimate interests of the public. A disclosure of this information is warranted for the purposes of schedule 2.
20. The forms also contain other information about the Chief Executive which is not contained in the table. They include the Chief Executive's payroll reference number with the council, his home town and also a copy of signature and the signature of the person who signed and agreed the claim. They also contain details of the CC of the car used on journeys by the Chief Executive.
21. The Commissioner is satisfied that this information will all fall within the definition of personal data. It relates to identifiable individuals at the council and provides a degree of biographical information about their activities.
22. Amongst other things, section 40 of the Act states that information is exempt from disclosure where it is the personal data of an individual and the disclosure of that information would breach one of the data protection principles of the Data Protection Act 1998.

23. The first data protection principle states that information must be processed (i.e., in this case disclosed) fairly and lawfully. It also requires that one of the conditions in schedule 2 of the DPA is met.
24. In order for a disclosure of the information to be 'fair', the individual must have some expectation that that information might be disclosed to the public in response to a freedom of information request. This might be because he was told that that would be the case or because it was obvious at the time that he provided that information. Alternatively, there may be a very strong interest in the information being disclosed to the public that would make that disclosure fair under the circumstances.
25. The First Tier Tribunal has previously drawn a distinction between personal, private information and information which is held which relates to a public or civil servant carrying out their public duties. It has also drawn a distinction in relation to the seniority of the individuals involved, and whether or not their role brings them into contact with the public on a regular basis (i.e. whether their role is 'public facing').
26. Where the personal data is about the individual carrying out their public duties, and does not impinge upon their private life to any great degree then the individual should have a stronger expectation that information might need to be disclosed, particularly where they hold a senior post within an authority.
27. The information held within the forms relates for the most part to the travel claims themselves. In essence this is information about how and where the Chief Executive has carried out his public duties. However personal information such as the home town of the Chief Executive is also held on the forms as it is information necessary for the correct calculation of expenses to be carried out. A disclosure of this would intrude into his private life, as well disclose information about his public duties.
28. The Commissioner is therefore satisfied that a disclosure of the home town of the Chief Executive would disclose personal information about him which relates to his private life. However interested parties would need to know this to ensure that mileage claims which arose during the course of his public duties are broadly correct.
29. The Commissioner notes that the information is not the home address of the Chief Executive. His home town/village is all that is named. He recognises however that its disclosure would significantly narrow the searches any determined individual would need to carry out in order to identify his home address.

30. Whilst information on his home town is not generally available, the Chief Executive will understand that the public authority must be transparent and accountable for its use of public funds. As the senior officer at the council the Chief Executive's role requires a fair amount of travel, and hence expense claims may play a fairly significant role in the overall spending of the authority. In order to fully understand the claims that have been made the public needs to know the home town of the Chief Executive.
31. The Commissioner's view is that the home town plays such an important part in determining whether the claims are correct that there is a strong public interest in its disclosure. Without that information it is next to impossible to even broadly determine whether many of the expense claims are correct.
32. Over recent years the importance of transparency on senior public officials' salaries, bonuses and the expenses they claim has been growing in importance to the public. It has become an issue of such importance that the public's trust in public authorities relies to an extent on the transparency it demonstrates on such issues.
33. Given the importance of this information in understanding whether the claims were correct the Commissioner considers that the legitimate interest in the public being able to access that information make its disclosure fair for the purposes of the first data protection principle.
34. The Commissioner has also decided that, for the purposes of schedule 2, a disclosure of that information is necessary in order to demonstrate to members of the public that the claims are correct. Although a disclosure of this information would intrude into the private life of the Chief Executive to some degree, the Commissioner considers that in this case that intrusion is warranted.
35. The Commissioner's decision is therefore that information on the home town/village of the Chief Executive which is held on the forms should be have been disclosed as section 40 was not applicable to this information.
36. The actual claim forms include the signature of the Chief Executive. The Chief Executive's signature is also to an extent personal information rather than public information. To an extent however the Commissioner questions the extent to which that signature could be considered 'private' information given that it is likely to will appear on annual accounts and reports.
37. The Act provides a right to information rather than copies of the documents themselves. Whilst the forms, complete with the signatures may not have to be disclosed, a record that the Chief Executive himself

either completed or signed the form to state that the expense claim was correct should be included as part of the disclosure.

38. It could be argued that a disclosure of the actual signature would not add any useful information to this consideration if the council confirmed who actually signed the expense form. However the Commissioner considers that a copy of the actual signature forms part of the reassurance that the Chief Executive is personally accountable for the claims that were made. A signature is a different form of information from a printed record that an individual made a claim. The signature provides an evidential record that the Chief Executive has personally completed the form and that he considers it to be correct.
39. Given that the signature is already available through the annual accounts (i.e. the Chief Executive's signature features in the forward to the 2011/2012 Annual Report published in May 2012), then any element of confidentiality is greatly weakened. It is available freely from the internet. For the purposes of transparency and personal accountability the Commissioner considers that a disclosure of the actual signature would not breach the first data protection principle and schedule 2.
40. The Commissioner has also considered the name of the individual who has signed and authorised the expense claims. The council has already stated to the complainant that the person responsible for signing all of the Chief Executive's expense claims is the council leader. This information was not however disclosed in response to the request, and it is not contained within the table. The Commissioner therefore considers that this information should also be disclosed. It demonstrates that proper procedures were followed by the council when agreeing the expense claims.
41. Again a copy of the council leader's signature appears in the May 2012 annual report and so it would be a disclosure of information which is already within the public domain. Given the relative importance of providing the public with a reassurance that council procedures were properly followed and that the forms were scrutinised by the council leader the Commissioner considers that its disclosure would not breach the fairness requirement of the first data protection principle and that there is a legitimate interest in its disclosure for the purposes of schedule 2.
42. The next concern is the Chief Executive's payroll reference number. The Commissioner considers that this relates to the Chief Executive's public role rather than his private life. The information would not appear to disclose anything about the private life of the Chief Executive. The Commissioner considers however that there would be little detriment to the Chief Executive if that information was disclosed.

43. However the data protection principle also requires that a schedule 2 condition is present. The Commissioner must consider whether it was necessary for the legitimate interests of the public for that information to be disclosed. If there are strong reasons for the disclosure of the information then the legitimate interest of the public in having access to that information may outweigh the expectations of the Chief Executive that his personal information would be withheld in response to a freedom of information request.
44. The Commissioner considers that this information would not generally be useful to the general public in terms of transparency and accountability in this case. It is not necessary to know the payroll reference number of the Chief Executive in order to understand the claim forms, or for the payments which have been made to be transparent and accountable.
45. Because of this the Commissioner considers that there is no adequate schedule 2 condition which meets the requirements of the first data protection principle. The Commissioner therefore considers that a disclosure of this information would breach the first data protection principle and so the information is exempt under section 40.
46. The Council also applied section 40 to the cc of the car driven by the Chief Executive. The cc refers to the size of the engine in the car and hence can affect the amount of fuel that that car uses per mile. Many travel expense processes include different rates of expense payments for different sizes of engine. In this case, knowing the cc of the car may be necessary to confirm that the correct rate per mile has been paid. There is therefore a legitimate public interest in that information being disclosed.
47. The information does not provide the make of car, nor provide its number plate in order for it to be identified. Given its relative importance in demonstrating that the correct rate of mileage was being claimed the Commissioner considers that the Chief Executive would not generally expect that that information would remain private, other than because of the context in which it was obtained by the council.
48. The Commissioner considers that the Chief Executive should have an expectation that information of that sort might need to be disclosed in order that the council is transparent and accountable for the expense payments it has made to him. He must also have some expectation that he would need to be accountable for the amounts which have been claimed for journeys he has made during the course of his duties. The Commissioner therefore considers that a disclosure of this information would be fair for the purposes of the first data protection principle.

49. For the purposes of a schedule 2 condition, the Commissioner also considered whether a disclosure was necessary for the purposes of the legitimate interests of the public. A disclosure of the information is necessary in order demonstrate that the claims which were made were correct. This outweighs the limited intrusion which would occur into the interests of the Chief Executive. He therefore considers that the council was wrong to claim that this information was exempt under section 40 of the Act.
50. The Commissioner is therefore satisfied that the information already published on the whatdotheyknow website does not constitute all of the information which should have been disclosed in response to the request. The council had claimed that all information which was not included on the forms was exempt under section 40(2). The Commissioner's decision is however that that was not correct. Therefore there is information held on the forms which is not available from the table held on the whatdotheyknow website.
51. The Commissioner's decision is therefore that section 21 was not correctly applied by the council to the information which is not available on the table provided on the whatdotheyknow website.
52. The Commissioner has also considered other information which will be held on the forms which is not available from the table. This is considered further below. In effect the form and format of the claim forms themselves will contain information which has not been disclosed via the table. Section 21 is therefore not applicable to this information.

Section 11 – Does the council have to provide copies of the actual documents?

53. The complainant made clear to the council that he wished copies of the actual expense claim forms to be disclosed to him. The Commissioner must therefore consider the council must provide the information giving preference to the complainant's request for a copy of forms themselves.
54. Section 11(1) allows requestors to state a preference as to how the information is provided to them. Section 11 requires an authority to disclose information in the format requested by the complainant unless it is unreasonable in the circumstances for it to do so.
55. However section 1 of the Act provides a right to access recorded 'information' rather than copies of actual documents. Hence if all of the information on a document is provided to a requestor then the authority will have complied with its obligations under the Act, even where it has not provided the requestor with a copy of the actual documents.

56. However it is not sufficient for the council to rephrase the document or provide an outline or summary of its contents unless the applicant has specifically expressed a preference for a digest or summary under section 11(1)(c). In this case the complainant has not done so.
57. The Commissioner also considers that if an applicant has expressed a preference to inspect the actual documents (or copies of the documents), the public authority should provide a reasonable opportunity to do so unless this is not reasonably practicable.
58. In considering whether the public authority has complied with the request, the Commissioner will therefore consider whether an authority has provided him with a copy of all of the information from the document. The Commissioner considers however that the form and format of a document is information in itself.
59. A document will often contain more information than just the main text. For example, an email will contain transmission information in the header and footer and may contain contact details in the email signature. What a person's actual signature looks like on a letter will be information over and above their name. The exact wording or phrasing of a document is also part of the information. However, the physical characteristics or evidential quality of a document (e.g. the paper it is printed on, the value of an original over a photocopy as evidence) are not information recorded in that document – for the purposes of the Act a complete and accurate copy will record the same information as the original.
60. In this case redactions would be required from the information in respect of the payroll number, however other than this he has decided that all of the other information should be disclosed.
61. In practice, if a copy of a document has been requested, the easiest and most reliable way to ensure that all the information within it has been provided will therefore be to provide a copy. However, in some cases it may also be possible to provide an accurate transcript of the contents of a document. The important thing is to consider whether all of the information contained in the document has been provided.
62. The Commissioner recognises that a disclosure of the information considered in the section 40 analysis above would still not provide all of the information which is held on the forms. Information such as the layout of the forms, headers and footers, declarations and signatures which are present on the forms would not be conveyed by a disclosure of the additional information highlighted above simply being added to the table which has been published on the WDTK website.

63. As regards the council's duties in respect of section 11, the Commissioner's decision is that the council is not under a specific duty to disclose actual copies of the documents themselves because the Act clearly only provides a right to information rather than documents.
64. However the Commissioner's decision is that the format in which the information is collated and in which the expense claim forms are completed is itself 'information' and that, for the council to comply with its obligations in this respect it needs to disclose all of that information to the complainant alongside the information which the Commissioner has decided should be disclosed above.
65. The clearest and pragmatic approach would be for the council to redact the payroll reference number from the document and to provide copies of this to the complainant. The council has however stipulated that it does not wish to do this. It must therefore either consider in what other way it can provide this information to the complainant.
66. If it is not able to do this it must disclose copies of the forms to the complainant with the payroll number redacted.

Right of appeal

67. 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

68. 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.
69. 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

Andrew White
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF