

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 June 2012

Public Authority: Bridgend County Borough Council

Address: Civic Offices
Angel Street
Bridgend
CF31 4WB

Decision (including any steps ordered)

1. The complainant requested copies of the minutes of the monthly trade unions meetings between Bridgend County Borough Council ('the Council') and the recognised unions. The Council disclosed some information but withheld details of the individuals attending the meetings and referred to in the minutes under section 40 of the FOIA. The Commissioner's decision is that the Council correctly applied section 40 to some of the information, but incorrectly withheld other information.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the names (and references to) senior Council officers, occupying posts at the level of "Head of" and above.
 - Disclose the name and reference to the external consultant referred to in the minutes of the meeting held on 12 January 2011.
 - Disclosure the names of the Unions represented as listed in the attendance list for each meeting.
3. 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

4. On 21 September 2011, the complainant wrote to the Council and requested information in the following terms:

“...the minutes (from January 2011 to the most recent) of the monthly trade union meetings (held on the second Wednesday of every month) between the recognised unions and management representatives”.
5. The Council responded on 18 October 2011 and provided copies of the minutes, subject to redaction of the names of individuals who attended the meeting and those referred to within the minutes. However, in this response, the Council did not specify the basis on which any information had been withheld.
6. On 28 October 2011 the complainant requested an internal review in respect of the information which had been redacted from the information disclosed.
7. The Council provided the outcome of its internal review on 18 November 2011. Although the Council did not specify that it was formally relying on section 40 as the basis for withholding the information requested, it confirmed that it had considered the Commissioner's guidance on disclosure of names of employees and considered the impact of the Data Protection Act 1998 ('the DPA'). The Council also stated that it also considered section 43 of the FOIA to be applicable.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way her request for information had been handled. She specifically asked the Commissioner to consider whether the information which the Council has withheld relevant to her request should be released.
9. During the course of the Commissioner's investigation, the Council advised that, having reviewed its original response it believed it should have applied section 43(2) to all of the information requested. This is because the nature of the information was considered commercially sensitive to all parties. However, it confirmed that, given the disclosure of the main body of the minutes, it was only relying on section 40(2) as the basis for withholding the personal data contained within the minutes.
10. The Commissioner has considered whether the Council was correct to withhold the requested information under section 40 of the FOIA.

Reasons for decision

Section 40 – personal information

11. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles or section 10 of the DPA.
12. In this case, the Council argued that the requested information is the personal data of the individuals referred to in the minutes of the meetings with the trade unions and that disclosure under the FOIA would breach the first data protection principle. The Council are also of the view that the information constitutes sensitive personal data as defined by section 2 of the DPA as some of the individuals referred to in minutes are members of a Trade Union. The Council stated that its policy was not to disclose, as a matter of routine, information about members of staff below Chief Officer level (the Chief Executive, Assistant Chief Executive and Corporate Director). The Council has also acknowledged that two individuals referred to in the withheld information occupy such positions.

Is the requested information personal data?

13. In order to rely on the exemption provided by section 40, the information being requested must constitute personal data as defined by section 1 of the DPA. It defines personal information as data which relates to a living individual who can be identified:
 - from that data,
 - or from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
14. The withheld information in this case comprises of names of individuals who attended the various meetings and those referred to within the content of the minutes (including reference to the individuals by their initials only). The Commissioner accepts that a living individual can be identified from their name (and by subsequent references to their initials only) and is satisfied that the names which have been withheld clearly constitute personal data. In some cases individuals are referred to within the minutes by their first name only. However, given the subject matter under which the individuals are referred to, the Commissioner considers that these individuals would be identifiable if the information was disclosed and as such the information would constitute their personal data.

Is the information sensitive personal data?

15. For completeness, the Commissioner has considered whether the withheld information also constitutes the sensitive personal data of the individuals.
16. Sensitive personal data is defined in the DPA as personal data which falls into one of the categories set out in section 2.
17. The Council argued that as the information requested is minutes of meetings between trade unions and the Council's management representatives, the information constitutes sensitive personal data. The Commissioner is satisfied that where the withheld information identifies that individuals are members of a Trade Union, the information constitutes sensitive personal data under section 2(d) of the DPA as personal data consisting of information as to:

(h) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992)".

Would disclosure contravene the first data protection principle?

18. Having accepted that the information requested constitutes the personal data and possibly the sensitive personal data of a living individual other than the applicant, the Commissioner must next consider whether disclosure would breach one of the data protection principles.
19. The Council has stated that disclosure of the information would breach the first data protection principle. The first data protection principle requires that the processing of personal data is 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. 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.
20. In considering whether disclosure of the information requested would comply with the first data protection principle, the Commissioner has first considered whether disclosure would be fair. In assessing fairness, the Commissioner has considered the reasonable expectations of the individuals concerned, the nature of those expectations and the consequences of disclosure to the individual. He has then balanced against these the general principles of accountability, transparency as well as any legitimate interests which arise from the specific circumstances of the case.

21. The withheld information can be broadly categorised into the following groups:

- (i) The names of officers working at the Council and who formerly worked at the Council, both in terms of attendees at the meetings and referred to within the body of the minutes, some of whom are also workplace representatives of one of the trade unions.
- (ii) The name of an external consultant employed in relation to a specific project.
- (iii) The names of individuals directly employed by the trade unions who attended the meetings in their capacity as trade union employees.

The Commissioner has considered the disclosure of the personal data of these different groups of individuals below.

(i) *Current and former officers of the Council*

22. In assessing what information third parties should expect to have disclosed about them, the Commissioner considers a distinction should be drawn as to whether the information relates to the third party's public or private life. Where the information relates to the individual's private life (ie their home, family, social life or finances) it will deserve more protection than information about them acting in an official or work capacity (i.e. their public life). The Commissioner considers that employees of public authorities should be open to scrutiny and accountability and should expect to have some personal data about them released because their jobs are funded by the public purse.

23. The Commissioner considers that the seniority of the individual acting in a public or official capacity should be taken into account when personal data about that person is being considered for disclosure under the FOIA. This is because the more senior a member of staff is, the more likely it is that they will be responsible for making influential policy decisions and/or decisions relating to the expenditure of public funds. In previous decision notices the Commissioner has stated that he considers that occupants of senior public posts are more likely to be exposed to greater levels of scrutiny and accountability and there should therefore be a greater expectation that some personal data may need to be disclosed in order to meet that need

24. In this case, the officers in question occupy a full range of posts within the Council from the Assistant Chief Executive down to more junior positions. The Commissioner considers that senior officers occupying a

post of "Head of" and above would have a greater expectation that their personal data would be disclosed. Although the Council has stated that its policy is not to routinely disclose information about staff below Chief Officer level, it publishes the names of staff occupying posts at "Head of" level and above on its website.

25. However, the Commissioner believes that it would be reasonable for more junior officials to have a greater expectation of privacy and that their names would not be disclosed to the public at large. Further, some of the information relating to these junior officials would constitute sensitive personal data as it identifies their membership of a trade union. The Commissioner has a long established position that the personal data of junior officials whose roles are not public facing is not normally disclosable and he sees no reason to depart from that position in this matter. Consequently, the Commissioner has decided it would not be fair to disclose the names of junior officials occupying posts below that of "Head of".
26. The Commissioner has gone on to consider whether revealing the details of the more senior officials occupying posts at the level of "Head of" and above could expose them to unnecessary or unjustified damage or distress and therefore make disclosure unfair. The Commissioner notes that redacted copies of the minutes have been disclosed under the FOIA without any complaints. The Council has not provided any compelling argument to explain why revealing the involvement of any particular individual in relation to the information discussed in the minutes would cause unjustified distress or damage to any individual. The Commissioner has noted the Council's arguments regarding the reasonable expectations of those involved but does not consider this provides any indication of the likelihood of specific distress or damage being caused to any of these individuals.
27. Given the above, the Commissioner does not believe that the disclosure of the names of senior Council officials referred to in the minutes and any comments attributed to them would be unfair.
28. The Council has argued that disclosure of the names it has withheld is not necessary to meet the legitimate interests of the public because the substance of the minutes has been disclosed, and the legitimate interests are not served in knowing the names of the individuals involved or referred to. The Commissioner accepts that, to an extent the legitimate interests of the public have been satisfied through disclosure of the redacted minutes. However, the Commissioner considers that disclosure of the names of the senior Council officials who attended and are referred to in the minutes would further promote openness and transparency of the actions and deliberations of this group. Disclosure of the names of the senior officials is necessary to

meet this need. Given the limited impact of disclosure on the individuals the Commissioner concludes that disclosure of the senior officer's details would be both fair and lawful. The Commissioner therefore finds that section 40(2) does not apply to the officials occupying positions of "Head of" level and above.

(ii) *The name of an external consultant*

29. The Council has redacted the name (and subsequent reference by initials only) of an external consultant who was employed to work on a specific project. The reference within the minutes to this individual, is limited in that it identified he attended one meeting to discuss one agenda item, and his initials are attributed to some comments he made at the meeting clarifying some issues relating to the project.
30. Although the Commissioner considers that this individual may have had no reasonable expectation that his personal information would be disclosed in these circumstances, again the Council has not submitted any specific representations in relation to any distress or damage that would likely arise to this individual if his details were disclosed. Further, the Commissioner has carried out an internet search and identified publicly available information about the fact that the organisation whom the individual is employed by was working on the specific project for the Council, and the individual is also listed as being employed by the organisation in question.
31. Based on this, the Commissioner is of the view that it would not be unfair to the individual concerned if disclosure of his name and reference to some comments being attributable to him were ordered in this case.
32. The Commissioner considers there is a level of public interest in knowing the identity of the consultant in question in the interests of transparency and accountability, and disclosure would be necessary to achieve it. Given the limited impact of disclosure the Commissioner concludes that disclosure of the consultant's name would be both fair and lawful. The Commissioner therefore finds that section 40(2) does not apply to the consultant's name.

(ii) *The names of individuals employed directly by the various Unions*

33. Whilst the Commissioner recognises that it will be publicly known that the Council engages with a number of trade unions, he considers it may not be as widely known which individuals attended each of the meetings with the Council. He considers that these individuals, whilst they attended the meetings in their capacity as union officials, would have an expectation that their personal information would not be disclosed in

these circumstances, and in particular their name attributed to various comments and issues raised at the meetings. The issues that were discussed at the meetings are primarily of a sensitive nature in that they involve issues which were likely to have a significant affect on Council employees, for example restructuring and potential redundancies.

34. Whilst the Commissioner accepts that the primary role of unions is to consider and negotiate with employers on policies, procedures and plans likely to affect its members, given the sensitivity of the issues discussed, he considers that disclosure of the individual details of the union Representatives in this case could result in speculation or criticism about their involvement in the issues under discussion. However, the Commissioner considers that this would not be the case in relation to the name of the union they represent, as detailed in the list of attendees of each meeting.
35. The Commissioner therefore believes there is a legitimate interest in knowing which unions were represented at each of the meetings and disclosure of this information contained within the attendance list would be necessary to meet this interest. Consequently, the Commissioner believes that the names of the unions represented at each meeting should be disclosed, but that it would be unfair to disclose the names of the individuals representing each union, and the comments and points attributed to these individuals.

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

Anne Jones
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