

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 December 2012

Public Authority: Sutton Bridge Parish Council
Address: Parish Council Office
The Curfew Centre
Bridge Road
Sutton Bridge
Spalding
Lincolnshire
PE12 9SA

Decision (including any steps ordered)

1. The complainant requested details of a settlement to an Employment Tribunal case brought by a former employee of Sutton Bridge Parish Council (the Council). The Council refused to disclose this information and cited the exemption provided by section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that the Council applied section 40(2) correctly and so it is not required to disclose the requested information.

Request and response

3. On 13 March 2012, the complainant wrote to the Council and requested information in the following terms:

"[in relation to the result of the settlement of the Employment Tribunal as was requested informally at the last Parish Council meeting, February 28 2012] we are...making a formal request for disclosure of the financial information."
4. The Council responded on 15 March 2012. It stated that the request was refused and cited the exemptions provided by sections 32(1)(c) (court records) and 40(2) (personal information) of the FOIA.

5. The complainant responded to the Council on 23 March 2012 and asked that it carry out an internal review. The Council responded with the outcome of the internal review on 16 April 2012. It stated that the refusal of the request under the exemptions cited previously was upheld.

Scope of the case

6. The complainants contacted the Commissioner on 18 April 2012 to complain about the way their request for information had been handled. The complainants indicated at this stage that they were dissatisfied with the reasons given for the refusal of their request.

Reasons for decision

Section 40

7. Section 40(2) of the FOIA provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles. The task for the Commissioner when considering this exemption is twofold; first, he must address whether the requested information constitutes the personal data of any third party. Secondly, he must consider whether the disclosure of this information would be in breach of any of the data protection principles.
8. Covering first whether the requested information is the personal data of any third party, the definition of personal data is given in section 1(1) of the Data Protection Act 1998 (DPA):

"personal data' means 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".

9. The view of the Commissioner is that it is clear that the information requested would constitute the personal data of the individual who was the appellant in the Employment Tribunal proceedings referred to in the request. The wording of the request means that any information falling within the scope of it would relate to the individual named in the request, and it appears to be the case that the complainant is aware of

the identity of that individual. It also appears to be likely to be the case that others in the area covered by the Council would be aware of the identity of the individual to whom the requested information relates. This information would, therefore, constitute the personal data of that individual in accordance with the definition given in section 1(1) of the DPA.

10. Turning to whether disclosure of that personal data would be in breach of any of the data protection principles, the Commissioner has focussed here on the first data protection principle. The first principle requires that personal data be processed fairly and lawfully and the particular focus here is on whether disclosure would be, in general, fair to the data subject. In forming a view on whether disclosure would be fair, the Commissioner has taken into account the reasonable expectations of the data subject, the consequences of disclosure upon the data subject and whether there is legitimate public interest in the disclosure of the information in question.
11. Covering first consequences to the data subject, the view of the Commissioner is that disclosure of the information would be likely to result in distress to the data subject. As covered below, the data subject would be likely to regard any record of the events to which the information request relates sensitive and, therefore, private. As a result, the conclusion on this point is that disclosure into the public domain of information relating to these events would be likely to cause distress to the data subject.
12. Turning to the reasonable expectations of the data subject, the view of the Commissioner is that it is likely that the data subject would hold a strong expectation of privacy in relation to any information concerning this particular subject matter. In general an employee would expect that information relating to them that is held by their employer, or former employer, would be kept confidential and the strength of this expectation would increase in line with the sensitivity of the information.
13. Furthermore, the Council has stated that the terms of the settlement were subject to a '*strict gagging order forbidding either party to reveal the terms of the settlement*'. Clearly, given that this information was subject to a specific agreement on confidentiality that applied to all parties, the data subject would have a particularly strong expectation that the requested information would not be disclosed.
14. On the issue of whether there is any legitimate public interest in the provision of this information, the Commissioner recognises that any compensation that was paid from Council funds would have meant the expenditure of public money. Given this, the Commissioner also recognises that there is some legitimate public interest in this

information. The Commissioner does not, however, believe that this public interest is of significant weight as it is likely that the sum of public money that would be in question would be, in public spending terms, very minor.

15. In conclusion, the Commissioner has recognised a legitimate public interest in this information on the basis that this concerns the possible expenditure of public money. However, his view is also that it is likely that the data subject would suffer distress through the disclosure of the information and that these individuals would hold a strong expectation of confidentiality in relation to the requested information. Given these factors, the Commissioner finds that the public interest is outweighed and that it would be unfair and in breach of the first data protection principle to disclose this information.
16. Overall the Commissioner has found that compliance with the request would involve the disclosure of personal data and that this disclosure would be in breach of one of the data protection principles. The conclusion here is, therefore, that the exemption provided by section 40(2) of the FOIA is engaged and so the Council is not required to disclose the requested information.
17. As this conclusion has been reached on section 40(2) it has not been necessary to go on to also consider section 32(1)(c).

Right of appeal

18. 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

19. 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.
20. 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

Jon Manners
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Information Commissioner's Office
Wycliffe House
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Wilmslow
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