

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 4 December 2012

**Public Authority:** Doncaster Metropolitan Borough Council  
**Address:** Council House  
College Road  
Doncaster  
DN1 3DA

#### Decision (including any steps ordered)

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1. The complainant requested information concerning the reason why a named individual left the employment of Doncaster Metropolitan Borough Council (the Council) and any associated financial package. The Council refused to disclose this information and cited the exemption provided by section 40(2) of the FOIA.
2. The Commissioner's decision is that the Council cited this exemption correctly and so it is not required to disclose this information.

#### Request and response

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3. On 21 May 2012, the complainant wrote to the Council and requested information in the following terms:  
*"the date [named individual] left his employment [with the Council], the reason for him leaving and what financial package did [named individual] receive if any".*
4. The Council responded on 13 June 2012. The complainant was advised of when the individual named in his request had left the employment of the Council. The remaining parts of the request were refused and the Council cited the exemption provided by section 40(2) (personal information) of the FOIA.
5. The complainant responded on 13 June 2012 and requested an internal review. The Council responded with the outcome of the internal review

on 17 July 2012. It stated that the refusal of the request under section 40(2) was upheld.

## Scope of the case

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6. The complainant contacted the Commissioner on 26 July 2012 to complain about the way his request for information had been handled. The complainant indicated at this stage that he was dissatisfied with the decision to refuse to disclose the majority of the information he had requested.

## Reasons for decision

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### 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 named in the request. The wording of the request means that any information falling within the scope of it would relate to that individual and the data subject is identified in the wording of the request. 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 the information in question as private and would reasonably expect their former employer to respect this. As a result, the conclusion on this point is that disclosure into the public domain of the information in question 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. In particular where information records a financial arrangement with an employer, or former employer, there would be a commonly held expectation of privacy.
13. On the issue of whether there is any legitimate public interest in the provision of this information, the Commissioner recognises that any financial package 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.
14. 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.

15. 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.

## Right of appeal

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16. 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](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)

17. 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.
18. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**