

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 22 July 2013

**Public Authority:** North Yorkshire County Council  
**Address:** County Hall  
Northallerton  
North Yorkshire  
DL7 8AD

#### Decision (including any steps ordered)

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1. The complainant requested from North Yorkshire County Council ("the council") a copy of a report regarding an allegation against a councillor. The council withheld the report under section 40(2) and 41(1) of the Freedom of Information Act 2000 ("the FOIA"). These exemptions relate to personal information and confidential information.
2. The Commissioner's decision is that the information should be withheld using section 40(2).
3. The Commissioner does not require any steps to be taken.

#### Request and response

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4. On 20 September 2012, the complainant requested information from the council in the following terms:  
  
*"Could you please forward to me, under the Freedom of Information Act 2000 a copy of the Investigation Officer [name] report in which he found that there had not been a failure to comply with the code of conduct by the subject member ie., [name]"*
5. The council replied on 15 October 2012. It said that the report was exempt under section 40(2) and 41(1) of the FOIA however it provided a brief summary of the issues in an attempt to assist the complainant further.

6. The complainant requested an internal review on 29 November 2012.
7. The council completed an internal review on 3 January 2013. It said that it wished to maintain its position.

### **Scope of the case**

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8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He asked the Commissioner to consider whether the council had correctly withheld the information.
9. For clarity, the withheld information is a report and appendices relating to an investigation. Some of the information forming part of this report was already in the public domain because of information already disclosed by the council. Information that was already publicly available has not been considered as part of this notice.

### **Reasons for decision**

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#### **Section 40(2) – Third party personal data**

10. This exemption provides that third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act 1998 ("the DPA").

#### **Is the withheld information personal data?**

11. Personal data is defined by the DPA as any information relating to a living and identifiable individual. All the information relates to an investigation that was conducted following allegations made about a councillor. The information is the investigating officer's full report and the evidence that was considered in reaching the report's outcome. The Commissioner considers that it is appropriate to consider the report in its entirety as comprising the personal data of the councillor, who can be identified from that information. Furthermore, the information also includes the personal data of other third parties who were involved in the investigation and who can also be identified.
12. The council did not rely on the exemption under section 40(2) in respect of all of the information however, having considered the information, the Commissioner decided that it was appropriate in the circumstances to exercise his discretion to consider the application of the exemption to all of the information.

13. The complainant argued that it may be possible for the council to disclose parts of the report with suitable redactions. For clarity, the Commissioner did not consider that this was an appropriate way forward for this particular case. The Commissioner does not accept that the information could be made suitably anonymous through redaction. It is already known that the report relates to a particular individual and much about the circumstances is also known, which risks the identification of others.

### **Would disclosure breach the Data Protection Principles?**

13. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

### **Reasonable expectations**

14. When considering whether a disclosure of personal information is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the individual or individuals concerned. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances. Nonetheless, any views expressed by the individual can be a useful starting point.
15. In this case, the council explained that it had specifically consulted the councillor's legal representatives who had confirmed that they did not expect, nor wish, the information to be disclosed. It is clear from their communications that they expected confidence and submitted evidence relating to their client and other third parties on this basis, on the understanding that it would be used for the purposes of assisting the council's investigation into the allegations.
16. The council has argued that the above was a reasonable expectation to have had in the circumstances and is consistent with the way such issues are usually approached in view of the nature of the information. The council said that a strong expectation of confidence generally arises in relation to information relating to disciplinary matters or issues of conduct concerning an individual because of the inherent sensitivity of that information.

17. The council also highlighted that the withheld information was treated as exempt information during the meeting of the sub-committee that considered the issues. It said that this was in accordance with paragraphs 1, 2, 3, and 7C part 1 of Schedule 12A to the Government Act 1972 as amended by the Local Government (Access to Information)(Variation) Order 2006 and in relation to standards information, the Standards Committee (England) Regulations 2008. The council argued that this would have given a clear indication that the information was considered to be confidential by the council.

### **Consequences of disclosure**

18. The council argued that further disclosure of information would be likely to cause distress and possibly lead to damage to reputational damage.

### **Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure**

19. By way of background to this matter, on 18 March 2011, the Complaint Determination Sub-Committee of the council (a sub-committee of the Standards Committee) considered a report by an investigating officer into a complaint made by a member of the public on 15 July 2010. The allegation was that a particular councillor had breached the Code of Conduct.
20. As already mentioned, the sub-committee considered the report in private because of its contents and resolved to exclude the press and public. A partial record of the decision, which was made available to the complainant following a previous freedom of information request, details that the complaint was referred to the council's monitoring officer for investigation on 6 August 2010. The specific allegations considered were as follows:
- The councillor concerned was the company secretary of a particular company, but did not register this on her registration of interests form in the council's Register of Members' Interests.
  - Although this interest had not been declared, the company concerned was trading with the council and consequently the councillor made a beneficial gain.
21. The council's monitoring officer appointed the deputy monitoring officer to undertake the investigation. The final investigation report (which forms the subject of this request) was provided to the monitoring officer on 20 January 2011. The investigating officer made a finding in his report that there had not been a failure to comply with the Code of Conduct by the councillor. The sub-committee decided to accept that

finding. A summary of the reasons why it had accepted the finding was made available as follows:

*"Based on all the evidence, the Sub-Committee concluded on balance that Councillor [name] was not aware that she had been nominated as company secretary until she was made aware of it following correspondence from the complainant in June 2007. Evidence had been presented that she had not in fact signed a form containing what purported to be her signature.*

*In relation to paragraphs 8 and 13 of the code, the Sub-Committee was satisfied on the balance of probabilities that Councillor [name] had not failed to register any interest of which she was aware. When she became aware of the facts that might amount to a registerable interest (ie that her name had been given as company secretary), she registered it promptly, well within the permitted 28 day period. There was accordingly no failure to comply with the Code.*

*In relation to paragraph 6 of the Code, Sub-Committee concluded that all decisions in relation to the transactions referred to in the complaint were made by officers. There was no involvement by Councillor [name] or any other elected member. The Sub-Committee accepted that there had been no failure to comply with the Code".*

22. The complainant told the Commissioner that he has many concerns relating to the actions of the councillor, the legal department and the company (which has now gone into liquidation). In particular, the complainant remains dissatisfied with the way in which the council handled the allegation described above and considers that further transparency is required in the circumstances. The complainant says that the records of the company concerned show that the councillor was company secretary between 5 October 2005 to the 31 March 2006 and he alleges that the conclusion drawn that there had been no breach of the Code of Conduct is a very questionable one. The complainant also alleges that the council's legal department is guilty of maladministration because it allowed the interest to be registered at a later stage and failed to refer the question of the forgery of the councillor's signature to the Companies Registrar.
23. The council told the Commissioner that it appreciates the public interest in disclosure. It accepts that serious concerns were raised, and there is a strong public interest in ensuring that the public have confidence in their elected representatives. However, the council argues that the legitimate public interest in being transparent and accountable about this issue has been satisfied to a reasonable extent through the

provision of the information referred to above, and the disclosure of additional information is not warranted in the circumstances.

24. There is always some legitimate interest in the disclosure of information that is held by public authorities. This is because disclosure helps to encourage the general aims of achieving transparency and accountability. It also assists people in understanding the decisions made by public authorities and to be more involved in that process. However, as with the disclosure of any information, there is always the question of degree and the circumstances will not always warrant the disclosure of every last detail of a particular matter in order to satisfy the legitimate public interest. Public authorities have to be mindful of their obligation to protect the right to privacy that individuals have where that is reasonable.
25. Having regard to all the circumstances of the case, the Commissioner decided that he agrees with the council's position as outlined above. It is clear that there were strong reasons why the individuals concerned would have expected confidence in the circumstances. The Commissioner also notes that the individual who was the subject of these allegations is no longer a councillor and in any event, appears to have cooperated fully with the investigation conducted in line with the proper process in place to consider such allegations. The main points of the conclusions reached have been made publicly available and it is fair for this individual to expect that she would now have the opportunity to move on in the absence of accepted and specific evidence to prove wrong-doing.
26. Clearly, the complainant continues to feel that the investigation was not conducted properly and he is entitled to hold that personal view. However, on the face of the evidence presented, a proper investigation has been conducted and no fault was found. It does not appear to the Commissioner that there are any grounds that would warrant revisiting this issue now through the disclosure of even more information, whether in the form of the whole report or more piecemeal disclosures lacking in complete context. The council has been reasonably transparent about the investigation that was conducted in line with the proper procedures. In view of the nature of the issues, further disclosure would be disproportionate.
27. In light of the above, the Commissioner considers that disclosure of the information would breach the first data protection principle because it would be unfair. Section 40(2) was therefore engaged.

## Right of appeal

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28. 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)

29. 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.
30. 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**  
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**Water Lane**  
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**SK9 5AF**