

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 3 June 2013

**Public Authority:** Monmouthshire County Council

**Address:** County Hall  
Cwmbran  
NP44 2XH

#### **Decision (including any steps ordered)**

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1. The complainant requested information about the employment of a named individual by Monmouthshire County Council ('the Council'). The Council withheld the information under section 40(2) of the FOIA. During the course of the Commissioner's investigation the Council withdrew its reliance on section 40(2) of the FOIA and disclosed all information held relevant to the request. The Commissioner's decision is that the Council breached section 10 of the FOIA in failing to provide the requested information within the statutory time for compliance. The Commissioner requires no steps to be taken.

#### **Request and response**

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2. On 16 November 2012, the complainant wrote to the Council and requested information in the following terms:

"Under the Freedom of Information Act I am requesting the following:

1. The number of times that MCC have appointed, employed, authorised, requested etc [named individual] to undertake work of any kind (paid or unpaid) since January 2011
2. Start and end dates of any work (as described in point 1) since January 2011
3. [named individual]'s role during any work (as described in Point 1 above) carried out since January 2011
4. [named individual]'s employment status (Full Time, Part Time, Consultant, Contractor, Other. Please state nature of Other) during the periods he was working (paid or unpaid) for MCC

5. If [named individual] has carried out work (of any kind, paid or unpaid) for MCC on behalf of the Planning Inspectorate, then please provide the start and end dates of such work and the nature of the work since January 2011
  6. If [named individual] is currently working for or on behalf of MCC either as a Planning Inspector for the Planning Inspectorate or as a paid or unpaid consultant or in some other capacity directly for MCC or as an associate or worker (paid or unpaid) of a third party company
  7. If [named individual] is working for himself or for a third party company please provide the name of the company he is trading under, runs or is otherwise associated with".
3. The Council responded on 10 December 2012 and withheld the requested information under section 40(2) of the FOIA.
  4. On 10 December 2012 the complainant wrote to the Council to request an internal review of its handling of the request as he disputed that the information constituted personal data.
  5. The Council provided the outcome of its internal review on 17 January 2013 and upheld its position that the requested information was exempt under section 40(2) of the FOIA.

### **Scope of the case**

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6. The complainant contacted the Commissioner on 17 January 2013 to complain about the way his request for information had been handled.
7. As there had been significant correspondence between the complainant and the Council including a number of requests, the Commissioner wrote to the complainant to ascertain the nature of his complaint. It was agreed that the scope of the investigation would be to establish whether the information requested on 17 January 2013, as detailed above, should be disclosed, or whether the Council was correct to withhold the information under section 40(2) of the FOIA.
8. During the course of the Commissioner's investigation, the Council withdrew its reliance on section 40(2) of the FOIA and disclosed all the information falling within the scope of the request.
9. The Commissioner contacted the complainant and asked him if he wished to withdraw his complaint in light of the full disclosure of the requested information. The complainant stated that he was not prepared to withdraw his complaint and wanted to make a formal complaint about the Council's initial refusal to provide the information. He also said that

he did not consider the requested information to be personal data and alleged that the Council had initially deliberately withheld the information.

10. The Commissioner does not consider it to be an efficient use of his resources to make a full investigation of whether obligations under section 1(1) of the FOIA existed at the time of the request, or whether any exemption(s) have been applied appropriately where a public authority has withdrawn its reliance on an exemption and disclosed the information. Where information has been disclosed in full before or during the Commissioner's investigation, his approach is to encourage the requester to withdraw their complaint. If they refuse to do so, the Commissioner will issue a decision notice recording the late disclosure of the information.
11. In view of the above, the Commissioner considers this complaint to relate to the delay on the part of the Council in providing the requested information. The Commissioner has also considered whether the Council has committed an offence under section 77 of the FOIA in the Other Matters section of this notice.

## **Reasons for decision**

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### **Section 10(1) – time for compliance**

12. Section 10(1) of the FOIA requires that a public authority complies with section 1(1) promptly and in any event not later than 20 working days following the date that a request was received. Section 1(1) states that a public authority should confirm whether it holds relevant recorded information and, if so, to communicate that information to the applicant.
13. The request was made on 17 January 2013 and the Council did not disclose the information until 11 April 2013 (after the Commissioner had commenced his investigation). In failing to provide the requested information within 20 working days of receipt the request, the Council breached section 10(1) of the FOIA.

## **Other matters**

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### **Section 77**

14. As indicated in paragraph 9 above, the complainant suggested to the Commissioner that the Council deliberately delayed providing the requested information.

15. Section 77 of the FOIA states that a criminal offence is committed if any person alters, defaces, blocks, erases, destroys or conceals any information with the intention of preventing the applicant from receiving any of the information he is entitled to receive. In order to secure a conviction in criminal proceedings, each element of an offence must be proven to the criminal standard, that being 'beyond reasonable doubt', as opposed to the lesser civil standard of 'balance of probabilities'. If this standard of proof is not met, any prosecution will fail. In order to uphold a section 77 offence the Commissioner has to prove that there was a clear intention to prevent disclosure on the part of the public authority.
16. The Commissioner has considered the circumstances of this case, but is not satisfied that there is any evidence to suggest it was the Council's intention to block disclosure of the information requested. The Commissioner also does not consider there to be any evidence to support the assertion that the Council initially claimed that the information was exempt from disclosure under sections 40(2) of the FOIA with the deliberate intention of preventing disclosure. Therefore the Commissioner has not undertaken a criminal investigation in this case.

## Right of appeal

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17. 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)

18. 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.
19. 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**  
**Assistant Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**