

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

### **Decision notice**

**Date:** 14 January 2014

**Public Authority:** Bolton Council

**Address:** Town Hall  
Bolton  
BL1 1RU

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

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1. The complainant submitted a request to Bolton Council (the Council) for the names of the five councillors who had received reminders for non-payment of council tax since May 2011 (two of these councillors had also received court summons for non-payment). The Council refused to disclose the names of the five councillors on the basis of section 40(2) of FOIA (the personal data exemption). In the particular circumstances of this case the Commissioner is satisfied that disclosure of the names of the five councillors would be unfair and breach the first data protection principle of the Data Protection Act. The names are therefore exempt from disclosure on the basis of section 40(2) of FOIA.

### **Request and response**

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2. On 13 November 2012 the Council provided a response to the complainant in respect of two requests (Council references RFI 2351 and RFI 2481) he had submitted to it about non-payment of council tax by ward councillors. The Council's response confirmed that since May 2011 six councillors had received reminders through the post about unpaid council tax; explained that of these two councillors had been summoned to court; and also explained how much money had been owed in each case and how much was still outstanding. (The Commissioner has replicated the Council's response to request RFI 2481 in the annex at the end of this notice).
3. On 16 November 2012 the complainant submitted a further request to the Council in which he asked it to name the six councillors in question.

4. The Council responded on 21 December 2012 and explained that it considered the names of these councillors to be exempt from disclosure on the basis of section 40(2) of FOIA.
5. The complainant contacted the Council on 28 January 2013 in order to ask for an internal review of this decision.
6. The Council responded on 22 March 2013 and confirmed that it remained of the view that the requested information was exempt from disclosure on the basis of section 40(2).

### **Scope of the case**

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7. The complainant contacted the Commissioner on 4 June 2013 to complain about the Council's decision to withhold the names of the six councillors on the basis of section 40(2). During the course of the Commissioner's investigation it transpired that due to an administrative error, only five actually councillors fell within the scope of requests RFI 2351 and RFI 2481. (The information concerning the councillor in 'case two' had been included in error). Therefore, by default, only five councillors fall within the scope of the request of 16 November 2013.
8. Consequently the scope of the Commissioner's investigation has been to determine whether the names of these five councillors are exempt from disclosure on the basis of section 40(2) of FOIA.

### **Reasons for decision**

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

9. Section 40(2) of FOIA states that personal data is exempt from disclosure if its disclosure would breach any of the data protection principles contained within the Data Protection Act 1998 (DPA).

#### Is the withheld information personal data?

10. Clearly then for section 40(2) to be engaged the information being withheld has to constitute 'personal data' which is defined by the DPA as:

*'...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,*

*and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.'*

11. The Commissioner is satisfied that the requested information clearly constitutes personal data of each of the five councillors as disclosure of information would clearly allow each of them to be identified. Furthermore, disclosure would reveal that the Council had taken some form of action in light of their failure to pay their council tax on time (ie issuing a reminder and in some cases, a court summons). Disclosure of their names would also reveal the amounts they had failed to pay on time in light of the information disclosed by the Council in response to RFI 2481.

Is some of the withheld information also sensitive personal data?

12. The Council argued that the names of the individuals in case one and case five also constituted sensitive personal data by virtue of section 2(h) of the DPA. This states that personal data is sensitive personal data if it concerns:

*'any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings, or the sentence of any court in such proceedings.'*

13. The Council argued that revealing the names of the councillors involved in cases one and five would, by default, reveal that they had been subject to court proceedings.
14. The Commissioner is satisfied that the names of the councillors in these two cases constitute sensitive personal data for the reasons suggested by the Council.

The first data protection principle

15. The Council argued that disclosure of the withheld information would be unfair and thus breach the first data protection principle which states that:

*'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –*

- (a) at least one of the conditions in Schedule 2 is met, and*

(b) *in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'*

16. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:

- The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
  - what the public authority may have told them about what would happen to their personal data;
  - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights (ECHR);
  - the nature or content of the information itself;
  - the circumstances in which the personal data was obtained;
  - particular circumstances of the case, eg established custom or practice within the public authority; and
  - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
- The consequences of disclosing the information, ie what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
  - whether information of the nature requested is already in the public domain;
  - if so the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?

17. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure.

18. In considering 'legitimate interests' in order to establish if there is such a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a

proportionate approach, ie it may still be possible to meet the legitimate interest by only disclosing some of the requested information rather than viewing the disclosure as an all or nothing matter.

*The Council's position*

19. With regard to the reasonable expectations of the five councillors, the Council acknowledged that in some circumstances councillors would expect information about them to be placed into the public domain given that they are responsible for major decisions which impact on the town they serve and expenditure of public funds. The Council noted that it proactively published details of councillor's allowances and expenses.
20. However, the Council argued that the five councillors would not expect information about a council tax debt – for which they may be co-liable with others not involved in public life - to be released. This expectation was based on the following factors:
  21. Information about the payment of council tax is not directly related to the expenditure of public funds. Any debt arising from a property is a private debt between those registered to pay council tax at that address and the Council. The Council does not publish the names of private individuals who owe council tax.
  22. Information concerning council tax is obtained simply for the purposes of administrating and processing council tax. The Council publishes information online as to how it will deal with non-payment of council tax, ie initially sending a reminder and then moving on to issuing a court summons if the debt remains outstanding.
  23. The only additional information that the Council provides to the councillors is that if they were more than two months late in paying their council tax then they cannot vote in budgetary matters until that debt is cleared. This is actively monitored by the Council.
  24. The Council acknowledged that if an individual had been summoned to court, then via any court proceedings, they may expect their names to enter into the public domain. Nevertheless, such individuals would still not expect the Council to disclose their names via FOIA but rather simply use their personal data for the continued recovery of the debt. Furthermore, for the two councillors who had received court summons (ie cases one and five) neither case had been reported on at the time.
25. In the context of Article 8 of the ECHR, the Council argued that there was a general expectation that such information would not be disclosed given that councillors have private lives beyond their council responsibilities. As noted above, the Council was of the view that the

withheld information related to a private debt between the individual and council.

26. With regard to the payments made shortly after a reminder had been issued, the Council argued that the expectation that such information would not be disclosed was particularly high. This is because a significant number of such reminders were issued (10,024 in the financial year 2011/12 and 8,537 in the financial year 2012/13) so that such a situation could not be considered sufficiently uncommon as to warrant public disclosure.
27. Finally, the Council explained that all of the councillors had refused to give consent for their names to be disclosed.
28. With regard to the consequences of disclosure, the Council emphasised that it considered disclosure of the names would result in a significant invasion into the privacy of the councillors given that the debt was a private one between each of them and the Council. Furthermore, the Council argued that disclosure would be likely to have a negative impact on each of the individuals on a financial level which could further impact on the individuals in question.
29. With regard to whether there was a compelling interest in disclosure, the Council noted that some of the councillors had paid shortly after receiving a reminder and no further action was necessary.
30. The Council acknowledged that there was a public interest in reassuring the public that councillors were not treated any differently to members of the public. However, it argued that this was done by the disclosures made in response to the requests RFI 2351 and 2481 which revealed that equal action is taken against all persons in arrears with a council tax debt.
31. Finally, as part of its submissions to the Commissioner, the Council provided details of the mitigating circumstances in relation to each of the five cases; in other words how the situation of late payment had occurred in respect of each councillor. Given the nature of these submissions which concern the personal circumstance of each individual, disclosure of which could lead the individuals to be identified, the Commissioner has not replicated them here.

#### *The complainant's position*

32. The complainant argued that it was reasonable for the public to expect certain standards of behaviour from their elected councillors – which would certainly include timely payment of their council tax – and it was therefore reasonable for the public to know if they fall below those standards.

33. Furthermore, the complainant argued that as the councillors are elected and in charge of public finance, they are not in the same position as other private citizens. Rather to some extent, by standing for public office, they surrender some of the rights to protection of their data in cases where they have abused the trust placed in them by the electorate.

*The Commissioner's position*

34. The Commissioner recognises that the Council has emphasised that the requested information relates to the private lives of the five councillors rather than information relating to their public roles as councillors. However, the Commissioner does not believe the division between private and public life, in this instance, to be as distinct as the Council argued.
35. Although the Commissioner accepts that payment of council tax is a private matter, separate from public office, the Commissioner considers that it should be within the reasonable expectations of an individual who has taken public office to expect a higher degree of scrutiny and that information which impinges on their public office might be disclosed. As non-payment of council tax for two months debars a councillor voting on budgetary matters, payment of council tax – or more accurately non-payment of council tax – clearly has potential to impinge on how they undertake their role as councillors.
36. Furthermore, in the Commissioner's opinion it is reasonable for councillors to expect that recent failure to pay council tax in a private capacity is likely to impact on public perceptions and confidence in those who have put themselves forward for such a public role. Therefore, the Commissioner is of the view that councillors should, in general, have a reasonable expectation that they may be identified as having failed to pay their council tax on time.
37. However, the Commissioner appreciates that each case needs to be considered on its own merits. In particular, he acknowledges that there may well be mitigating circumstances which explain why certain councillors have not paid their council tax on time and thus have received reminders and/or court summons in relation non-payment. Moreover, the Commissioner accepts that such mitigating circumstances could significantly impact on whether disclosure of a councillor's name would be fair. This is because the nature of the circumstances in a particular case may legitimately increase a councillor's expectation that they would not be publically named. For example, the late or non-payment of council tax was due to factors outside of their control.

38. As noted above, the Council has provided the Commissioner with submissions which explain why, for each of the five councillors, the late payment occurred. The Commissioner has considered these submissions carefully and has concluded that for all five councillors the nature of their personal circumstances which resulted in late payment would significantly, and moreover legitimately, raise their expectation that they would not be publically named. This is to the extent that in the Commissioner's view disclosure of the names of the five councillors would be so contrary to their legitimate expectations that disclosure would clearly be unfair.
39. The Commissioner recognises that the brevity of his reasoning in reaching this conclusion may prove frustrating to the complainant. However, as explained above, in the Commissioner's view any detailed discussion of the various circumstances of each councillor arguably risks identifying the individuals concerned.

## Right of appeal

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40. 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: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

41. 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.
42. 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 .....**

**Gerrard Tracey**  
**Principal Adviser**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

## **Annex**

Council's response to the complainant's request RFI 2481:

***'Can you tell me the amounts owed in each case and whether any money is still owed to the council from these cases?'***

### *Case 1 (Conservative)*

- For 2011/12 a summons was issued for £1331.18 – this is now paid in full*
- For 2012/13 a summons was issued for £1353.18 – there is now £753.18 outstanding which is on an arrangement.*

### *Case 2 (Conservative)*

- For 2012/13 A reminder was sent for £103.37 – this account has been paid in full for the year.*

### *Case 3 (Conservative)*

- For 2011/12 reminders were sent for £300.51 – this account has been paid in full.*

### *Case 4 (Labour)*

- For 2012/13 a reminder was sent for £141.00 – this account is now up to date.*

### *Case 5 (Labour)*

- For 2011/12 a summons was issued for £936.00 – this is now paid in full*
- For 2012/13 a summons was issued for £1039.89 – there is now £439.89 outstanding which is on an arrangement.*

### *Case 6 (Labour)*

- For 2012/13 reminders were issued for £144.92 – this account has been paid in full.'*

It should be noted that the Council subsequently confirmed to the complainant that 'case two' had been included in error.