

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 17 February 2015

**Public Authority:** Yarm Town Council  
**Address:** Town Hall  
High Street  
Yarm  
TS15 9AH

#### Decision (including any steps ordered)

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1. The complainant has made a request to Yarm Town Council ("the council") for information relating to the council's decision to seek legal advice. The council provided some information in response, but with contact information redacted under the exemption provided by section 40(2) of the Freedom of Information Act ("the FOIA"). The complainant subsequently contested the council's application of section 40(2), and whether all held information had been otherwise disclosed.
2. The Commissioner's decision is that the council has correctly withheld information under section 40(2), and has otherwise provided all held information that falls within the scope of the request. However, the council provided its response outside of 20 working days, and therefore breached the requirement of section 10(1).
3. The Commissioner does not require any steps to be taken.

#### Request and response

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4. On 3 December 2013, the complainant wrote to the council and requested the following:
  - a. *When did Yarm Town Council agree to instruct [redacted solicitors] in the matter of the Judicial Review that took place in 2012.  
Please provide the minutes of the Council meeting at which this was agreed and any follow up emails including quotes for work.*

- b. *Who authorised the Clerk to instruct [redacted solicitors] on the 31st Jan 2012 that the Road Traffic Regulation Act 1984 and the Traffic Management Act 2004 were not to be considered by the Barrister that [redacted solicitors] had retained to provide legal opinion re the Judicial review. Please provide the minutes of the Council meeting where this was agreed.*
- c. *23/02/12 Please provide me with the quotes relating to When did the meeting take place (The Clerk suggested a meeting for Cllrs to agree to the additional expenditure for the insurance quote.). Please provide Insurance quotes.*
- d. *13th March 2012 Yarm town council meeting  
Item A10 HIGHWAYS AND TRANSPORT/ENVIRONMENT  
Cllr [redacted name] requested that all Cllrs should see the papers submitted to court including the Statement from [redacted name]. Please confirm all councillors did see these papers and dates sent.*
- e. *Please provide me with signed minutes 3rd May 2012 referred to below:*  
  

*MINUTES OF AN EXTRA-ORDINARY MEETING OF THE YARM TOWN COUNCIL HELD IN THE TOWN HALL AT 7:30 PM ON WEDNESDAY THE 24TH OCTOBER 2012 PUBLIC SESSION*

*In the minutes of the 3rd of May Cllr [redacted name] had confirmed that after the event insurance had been obtained and that the solicitor was considering whether or not the cost was a fair amount.*
- f. *Why were [redacted solicitors] engaged / Were they engaged correctly in any event. Please provide dates and quotes of other solicitors contacted as suggested by [redacted name] and emails to other councillors confirming [redacted solicitors] had been engaged.*
- g. *Why were Yarm town council not informed until the 24th Aug 2012 that no insurance cover was available?*
- h. *At which Town Council Meeting the decision was made to waive standing order 29. Please provide minutes and tenders.*
- i. *Full breakdown of cost's from [redacted solicitors] including any expenses claimed by Councillors.*

5. The council responded on 13 December 2013. It provided held information (for parts 1, 4, 6, 7 and 9), confirmed that some information was not held (for parts 2, 3, 5, 6, 8 and 9) and withheld some information (for parts 1 and 6) under the exemption provided by section 40(2).
6. The complainant requested an internal review on 9 January 2014.
7. The council provided an internal review on 28 January 2014. It provided the majority of the information that had been previously withheld for parts 1 and 6 under section 40(2), but redacted elements of it under the same exemption.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 17 February 2014 to contest the council's response. Specifically, she contested the council's redaction of information under section 40(2) for parts 1 and 6 of the request, and whether the council had otherwise disclosed all held information.
9. The Commissioner considers that the scope of this case is the determination of whether the council has correctly applied the exemption provided by section 40(2) for parts 1 and 6 of the request, and whether the council has otherwise complied with section 1(1) by disclosing all other held information that relates to the request.

### **Reasons for decision**

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

10. Section 40(2) provides that:

*"Any information to which a request for information relates is also exempt information if–*

- (a) it constitutes personal data which do not fall within subsection (1), and*
- (b) either the first or the second condition below is satisfied."*

- Section 40(3) provides that:

*"The first condition is–*

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data*

*Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene–*

*(i) any of the data protection principles...”*

Is the withheld information personal data?

11. Personal data is defined by section 1 of the Data Protection Act 1998 (“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 data controller or any person in respect of the individual...”*

12. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA. In this instance the Commissioner has considered the nature of the information that has been withheld, and perceives that it constitutes the names and email addresses of individuals, and is therefore clearly identifiable personal data.

Would disclosure breach the data protection principles?

13. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
14. The Commissioner’s considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

*Reasonable expectations of the data subject*

15. When considering whether a disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. 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.

16. In this case the council has confirmed that the personal data relates to a range of individuals, including councillors, council staff, solicitors, and other private individuals.
17. The council has proposed that because of the context that the correspondence took place within, namely the decision to take legal action, the individuals would not have held an expectation that their personal data be publically disclosed.

*The consequences of disclosure*

18. The council has proposed that the disclosure of the information would have an unjustified adverse effect on the individuals to whom it relates. This is because it relates to the decision of the council to take legal action, which was subsequently unsuccessful, and that the disclosure of individual's identities who corresponded on this matter would allow these individuals to be targeted.

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

19. The council has advised the Commissioner that it has considered the importance of ensuring that information about the substantive matter is publically available. However it considers that the disclosure of the personal data of individuals, who were copied into, or else contributed to email correspondence about the decision to undertake legal advice would not serve a legitimate interest.

*Conclusion*

20. There is always some legitimate public interest in the disclosure of any information held by public authorities. This is because disclosure of information helps to promote transparency and accountability amongst public authorities. This in turn may assist members of the public in understanding decisions taken by public authorities and perhaps even to participate more in decision-making processes.
21. In the circumstances of this case the Commissioner's conclusion is that the disclosure of the redacted information would not be fair. It is evident to the Commissioner that the decision to undertake legal action was made by the council as a public authority, and any appeal against the council's governance and decision making processes would need to be made to the appropriate public authority. The disclosure of the information withheld under section 40(2), namely the identities and contact details of individuals including councillors, council employees,

and solicitors, would not serve any practical purpose in addressing the substantive matter that the complainant appears to be concerned about.

22. The Commissioner has therefore concluded that disclosing the information would not be fair under the first principle of the DPA, and that the exemption provided by section 40(2) has been correctly applied.

### **Section 1(1) – Duty to make information available on request**

23. Section 1(1) of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information, and if so, to have that information communicated to them. This is subject to any exemptions or exclusions that may apply.
24. On 13 May 2014, the Commissioner wrote to the council to request details about the searches that it had undertaken in response to the complainant's request.
25. The council has advised the Commissioner that it has undertaken both manual and electronic searches for information that would fall within the scope of the request. This has included electronic key word searches of the council's emails, and a hard drive search for held reports and minutes. The council further undertook a manual search of correspondence that it had received, and information that had been provided by the council's solicitors. The council has further elaborated that it has invited the complainant to its premises in order to review files and other information that it holds in relation to the complainant's interests.
26. The complainant has contested that emails relevant to her request have been published by a councillor on the website of a local political group, and has provided the Commissioner with a link to a .pdf document, comprising 32 pages, that is available on the group's webpages. The Commissioner has reviewed this document and has identified that it contains what appear to be copies of emails between councillors, the council, and external solicitors, in addition to what appears to be commentary written by other individuals.
27. The council has advised the Commissioner that it has referred to the .pdf document referred to by the complaint, and has additionally spoken to the councillor about the matter. The council has informed the Commissioner that it is aware the councillor holds emails in respect of their work as a councillor, but that it does not consider that the copies of emails contained within the .pdf document have relevance to the complainant's request for information.

28. The Commissioner has reviewed the .pdf document in conjunction with the complainant's request for information, which the Commissioner notes is highly specific in describing the correspondence that is sought. Having considered these documents, and the wider matter that the request appears to relate to, the Commissioner does not perceive that the copied emails in the .pdf appear to fall within the scope of the complainant's specific request.

*Conclusion*

29. In the circumstances of this complaint, the Commissioner must decide on the balance of probabilities whether the council is likely to hold further recorded information that falls within the scope of the complainant's request.

30. The Commissioner has first considered the apparent breadth of the council's electronic and manual searches for information. The Commissioner, having considered the likely form and format that a parish council is likely to hold its records in, does not perceive that there has been any apparent omission in the searches that it has undertaken for relevant information.

31. The Commissioner has further considered the complainant's assertion that further emails are likely to be held by the council, with specific regard to a document that has been published on the website of an independent political group. The Commissioner has reviewed this document, but does not perceive that it contains any evidence that would suggest the council holds further recorded information that falls within the scope of the complainant's request.

32. Having considered the above factors, and the absence of any clear contradictory evidence, the Commissioner must reach the conclusion that further recorded information is unlikely to be held by the council.

**Section 10(1) – Time for compliance**

33. Section 10(1) requires that a public authority must issue substantive response within the time for compliance, which is 20 working days following the date on which the request is received.

34. In this case the Commissioner has identified that the council issued its response outside 20 working days, and therefore breached the requirement of section 10(1).

## Right of appeal

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35. 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)

36. 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.
37. 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**  
**Wycliffe House**  
**Water Lane**  
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**Cheshire**  
**SK9 5AF**