

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 February 2015

Public Authority: Craven District Council
Address: 1 Belle Vue Square
Broughton Road
Skipton
North Yorkshire
BD23 1FJ

Decision (including any steps ordered)

1. The complainant has requested information from Craven District Council ("the council") about an individual leaving the employment of the council. The council refused the request under the exemption provided by section 40(2) of the Freedom of Information Act ("the FOIA").
2. The Commissioner's decision is that the council has correctly applied section 40(2) to the circumstantial information relating to the individual's departure, but that the exemption does not apply to the compensation payments that the individual received on their departure.
3. The Commissioner requires the council to disclose the compensation payments that the individual received on their departure.

Request and response

4. On 12 August 2014, the complainant made the following request:
 1. CRAG notes that [redacted name], presently titled 'Corporate Head (Financial Management)/Section 151 Officer* has apparently left CDC.
 2. Please forward details of her resignation ** including term of notice and any severance payment made from public funds for cessation of office.
 3. If the answer is to be given as 'no answer due to confidentiality' then I would appreciate a swift response, that I may have recourse to the

Office of the Information Commissioner. It is clear that this is of public interest, and I am sure that CDC will wish to be open and transparent in this matter.

4. ** So titled as of today's date on CDC website.*
5. *** I have written 'resignation' assuming that [redacted name] has not been dismissed. Redundancy cannot apply in this case of course, as [redacted name] is still classed as the Section 151 Officer, a mandatory position under LGA Act 1972, and only positions may be made redundant, not people. If [redacted name] WAS dismissed, please correct my misunderstanding.*

5. The council responded on 26 August 2014, and refused the request under section 40(2) and section 41(1).
6. Following an internal review the council wrote to the complainant on 23 September 2014. It withdrew reliance on section 41(1) but maintained that section 40(2) applied to the withheld information in its entirety.

Scope of the case

7. The complainant contacted the Commissioner on 30 September 2014 to contest the council's refusal.
8. 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). The council has suggested that the request only seeks information about compensation payments made to the individual under a settlement agreement, and not the settlement agreement itself. However, to address the potential breadth of the complainant's request and to avoid ambiguity, the Commissioner will consider the settlement agreement in addition to the compensation payments.

Reasons for decision

Section 40(2) – the personal data of third parties

9. 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."*

10. 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 reviewed the compensation payments and settlement agreement, and has identified that the information specifically relates to the individual that the complainant has named in the request.

Would disclosure breach the data protection principals?

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 the 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 advised that it believes the individual would have an expectation that the compensation payments would be remain confidential due to their inclusion in the settlement agreement, which contains a confidentiality clause. The council also considers that the circumstances of the individual's departure, as contained within the settlement agreement, are inherently personal, and that in the absence of any allegations of mismanagement, the individual would not expect that information to be disclosed.

The consequences of disclosure

17. The council has proposed that the disclosure of the information would have an unjustified adverse effect on the individual to whom it relates, as it may affect the individual's health and potential future employment.

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

18. The council has advised the Commissioner that it acknowledges the withheld compensation payments represent the expenditure of public money, and has confirmed that the council intends to publish the compensation payments as part of the council's accounts, as required by regulation 7(3)(iv) of the Audit and Account (England) Regulations 2011. The council has clarified that the council's accounts will then be open to public inspection, and a notice advertising their availability will be published.
19. On this basis of the above, the Commissioner understands that the withheld compensation payments will be disclosed in the future as part of the council's public accounts, and that this is required by law. This would appear to negate the council's arguments for the application of section 40(2), as the disclosure of such information has already been deemed as fair in law.

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 request, the Commissioner has identified that the principal item of information that the request appears to seek is the

compensation payments provided to the individual after their departure from the council's employment. This individual was formerly a senior officer within the council, and the council has confirmed that the compensation payments are to be included in the council's public accounts, as required by law. On this basis of this, the Commissioner considers that the exemption provided by section 40(2) does not apply.

22. In respect of the wider circumstances of the individual's departure from council officer, the Commissioner has reviewed the settlement agreement, and considers that it would not be within the expectations of the individual for this information to be disclosed. In the First-tier Tribunal case of *Gibson v Information Commissioner and Craven District Council* (EA/2010/0095), the tribunal found that the legitimate interest of the public only outweighed the prejudice to the rights, freedoms or legitimate interests of an individual to the extent that the information concerned related to the use of public funds. In this case, the disclosure of the settlement payments has been found as fair. However, the disclosure of further contextual information regarding the individual's departure would interfere with their rights, freedoms and legitimate interests as a data subject. The Commissioner has therefore concluded that disclosing this information would not be fair under the first principle of the DPA, and that the exemption provided by section 40(2) is engaged.

Right of appeal

23. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

24. 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.
25. 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
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