

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 28 September 2015

**Public Authority:** Royston Town Council

**Address:** Royston Town Hall  
Melbourn Street  
Royston  
SG8 7DA

#### Decision (including any steps ordered)

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1. The complainant requested the name of an individual who had made a donation to Royston Town Council (the Council) in order to fund the development of a new cemetery. The Council withheld this information under the exemption provided by section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that the Council cited section 40(2) correctly and so it was not obliged to disclose this information.

#### Request and response

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3. On 12 July 2015 the complainant wrote to the Council and requested information in the following terms:

*"I write seeking the name of the 'anonymous' donor who provided a gift/donation to Royston Town Council to assist them in purchasing the land at Wicker Hall for the development of a new cemetery."*

4. The Council responded on 22 July 2015. It refused the request and cited the exemption provided by section 40 (personal information) of the FOIA. This refusal was upheld at internal review.

## Scope of the case

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5. The complainant contacted the Commissioner on 23 July 2015 to complain about the refusal of his information request. The complainant indicated that he did not agree that the information he had requested was exempt under section 40(2).

## Reasons for decision

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### Section 40

6. The Council is relying on section 40(2). This section provides an exemption for information that is that personal data of an individual other than the requester and where the disclosure of that personal data would be unfair and in breach of any of the data protection principles. This means consideration of this exemption has two stages; first whether the information constitutes the personal data of a third party and, secondly, whether disclosure of that personal data would be in breach of any of the data protection principles.
7. Covering first whether the requested information constitutes personal data, the definition of personal data is given in section 1(1) of the Data Protection Act 1998 (DPA):  
  
*"personal data' means data which relate to a living individual who can be identified-*  
  
*(a) from those data, or*  
  
*(b) from those data or other information which is in the possession of, or is likely to come into the possession of, the data controller".*
8. The information in question in this case is the name of an individual. Clearly this information both relates to and identifies that individual and so it is their personal data according to the definition given in section 1(1) of the DPA.
9. Turning to whether disclosure of this personal data would be in breach of any of the data protection principles, the Commissioner has focussed here on the first data protection principle, which requires that personal data be processed fairly and lawfully. In particular, the question here is whether disclosure of this information would be, in general, fair to the data subject. In forming a conclusion of whether disclosure would be fair, the Commissioner has taken into account the reasonable

expectation of the data subject and what impact upon them may be likely to result through disclosure. He has also considered what legitimate public interest there may be in disclosure of this information.

10. As to the reasonable expectation of the data subject, the reasoning of the Council for withholding this information was that the donor had specifically requested that their identity not be disclosed. Clearly given this request, and assuming that the Council agreed to this condition, the data subject would hold a strong expectation of privacy in relation to this information.
11. As to what the consequences of disclosure upon that individual would be, the view of the Commissioner is that disclosure contrary to the reasonable expectation of privacy referred to above would be likely to be distressing to the donor.
12. Turning to the issue of whether there would be any legitimate public interest in the disclosure of this information, whilst section 40(2) is not qualified by the public interest in the same way as some of the other exemptions in part II of the FOIA, it is necessary for there to be a public interest element in order for disclosure to comply with the first data protection principle. The question here is whether any legitimate public interest that exists in disclosure would outweigh the arguments against disclosure covered above.
13. The complainant has argued that there is legitimate public interest in disclosure of this information in order to "*allay any suggestion that the donor has, in return for the donation, received any favourable treatment from the Town Council*". However, the Commissioner is unaware of any such suggestion having been made and has seen no evidence indicating that the donor has received favourable treatment. The Commissioner does not, therefore, agree that there is public interest in favour of disclosure on that basis. He does, however, believe that there is some limited public interest in disclosure in the interests of the transparency of the Council, a point which was also argued by the complainant.
14. The Commissioner's view is that the donor would have a reasonable expectation that their identity would not be disclosed and that disclosure contrary to that expectation would be likely to be distressing to them. Whilst he has found that there is some limited public interest in disclosure of this information, he does not believe that this is sufficient to outweigh the factors against disclosure. His conclusion is, therefore, that disclosure of this information would be unfair and in breach of the first data protection principle
15. The Commissioner has found that the information in question is the personal data of an individual other than the requester and that the

disclosure of that personal data would be in breach of the first data protection principle. His overall conclusion is, therefore, that the exemption provided by section 40(2) is engaged and so the Council was not obliged to disclose the requested information.

## Right of appeal

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

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

17. 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.
18. 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 .....**

**Jon Manners**  
**Group Manager**

**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**