

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

### **Decision notice**

**Date:** 7 December 2015

**Public Authority:** Lyneham and Bradenstoke Parish Council

**Address:** C/O Jays Cottage  
Compton Road  
Hilmarton  
Wiltshire  
SN11 8SG

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

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1. The complainant has requested information regarding the total sum paid out by Lyneham and Bradenstoke Parish Council as a result of the removal of a previous Parish Clerk. The Commissioner's decision is that Lyneham and Bradenstoke Parish Council has incorrectly applied the exemption for information accessible to the applicant by other means at section 21 of the FOIA but has correctly applied the exemption for personal data at section 40(2) of the FOIA. He has also found that Lyneham and Bradenstoke Parish Council breached the procedural sections 17(1)(b), 17(7)(a) and 17(7)(b) of the FOIA. He does not require the public authority to take any steps to ensure compliance with the legislation.

#### **Request and response**

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2. On 25 July 2015, the complainant wrote to Lyneham and Bradenstoke Parish Council ('the council') and requested information in the following terms:

"I wish to know the total amount of money lost to the Parish Accounts as a result of the removal of the last Parish Clerk.

I wish to make it clear that I do not want to know any names of solicitors or their individual costs or any other details other than the total figure lost to the accounts as a direct result of terminating the employment.

This payment would be all costs to solicitors, ex Clerk, extra hours for present clerk if appropriate and any other associated costs relating to the removal.”

3. The council responded on 27 July 2015 stating that the email is not a valid request under any current legislation. It said that the complainant exercised his rights to inspect the 2014-2015 accounts and that no information that could lawfully be shown was concealed. It also said that because the complainant has had access to all the information he seems to be requesting, it is not clear what he is now trying to ask for and suggested that he contact a particular councillor to help formulate a request.
4. The complainant responded on the same day. He clarified the following:  
  
“I very simply want to know the total sum paid out to settle the removal of the last clerk”  
  
and said that the information in the accounts did not give the total sum requested.
5. On 30 July 2015 the council responded. It said that it has repeatedly informed the complainant why it cannot give him the requested information and that a request made under the FOIA does not mean that there is an obligation to provide information if there are valid reasons preventing a public authority from doing so. It also said that there has been ‘no loss’ to the accounts.
6. Following the intervention of the Information Commissioner, the council provided the complainant with an internal review of its response on 1 September 2015. It said that the information is exempt under section 21 of the FOIA. It also said that the ‘council is considered to have acted correctly in refusing to disclose the personal information [complainant’s name] requested prior to 25/07/15 in conformance with provisions of the DPA’.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 1 August 2015 to complain about the way his request for information had been handled.
8. The Commissioner has considered the council’s application of the exemption at section 21. He has also specifically considered the settlement sum as that is the only information not made available on inspection therefore the analysis continues on that premise and

considers whether access to that should be withheld under section 40(2) of the FOIA.

9. He has also considered whether the council has breached procedural provisions of section 17 of the FOIA in relation to its refusal of the request.

## **Reasons for decision**

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### **Section 21 - information accessible to the applicant by other means**

10. Section 21 of the FOIA provides that a public authority does not need to provide information under section 1 of the FOIA if that information is reasonably accessible to the applicant by other means. This is an absolute exemption so not subject to the public interest test under section 2.
11. The purpose of the exemption is to ensure that there is no right of access to information via FOIA if it is available to the applicant by another route. The Commissioner's guidance on the subject<sup>1</sup> explains that, unlike consideration of most other exemptions in FOIA, a public authority can take the individual circumstances of the applicant into account. In order for section 21 to apply there should be another existing, clear mechanism by which the particular applicant can reasonably access the information outside of FOIA.
12. In order to make a decision on this exemption, the Commissioner asked the council the following questions:
  - Please clearly explain how all of the requested information would be accessed by the applicant and why this information is considered to be reasonably accessible to him/her specifically.
  - Please confirm whether the total sum paid out to settle the removal of the last clerk is contained within the parish accounts available for public inspection and provide the Commissioner with a copy of the accounts showing this figure.

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[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf)

- Please confirm whether individual entries in the parish accounts available for public inspection contain details of what the payment was for – i.e. whether entries are marked as being relevant to the removal of the parish clerk.
  - Please explain how a viewing of the accounts which took place on 2 June 2015 constitutes information being reasonably accessible in response to a request made on 25 July 2015.
13. The council did not respond to these questions directly but instead it said that the total sum requested is not available as a single sum in the parish accounts but is available through summation of a number of individual transactions shown as lines in the unredacted parish account ledger, all of which were available for inspection by the complainant, including all those for which the supporting documentation had been removed in accordance with section 26(6) of the Local Audit and Accountability Act 2014 ('the LAAA'). The Commissioner understands that section 26(6) of the LAAA states that a person is not entitled to inspect or copy any record or document containing personal information.
14. The council explained that the complainant requested to exercise his right to view the accounts following a series of requests for information prior to the date on which he inspected the accounts. The Commissioner understands that the complainant viewed the accounts on 2 June 2015. The Council said that it considers it reasonable to suppose that the complainant, in inspecting the accounts and taking notes, had seen all of the information he had obviously set out to discover and that, having requested information prior to his inspection of the accounts, his further request for the same information at a date following his inspection was considered to be within the scope of the provisions of Section 21.
15. The Commissioner considers that information is reasonably accessible where a public authority is able to precisely direct the applicant to the information and it can be found without difficulty and not hidden within a mass of other information. In addition, for section 21 to apply, it is necessary to consider whether the entirety of the information is reasonably accessible to the applicant. Although the council did not directly answer the questions on these points, it appears to the Commissioner that an inspection of the accounts as described by the council does not constitute the requested information being accessible to the complainant. This is because the complainant would need to correctly identify a number of individual transactions to obtain the total sum and, given that personal data was removed in accordance with section 26(6) of the LAAA, it appears that it would not be clear which transactions are relevant.

16. Furthermore, the Commissioner understands that, under the LAAA, the council's accounts were available for inspection for a 20 day period which occurred before the request was made in this case. The Commissioner does not consider that section 21 can apply when the requested information is not in fact available at the time a request is made.
17. Taking the above into consideration, the Commissioner considers that section 21 does not apply in this case.

### **Section 40 - personal information**

18. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles or section 10 of the Data Protection Act 1998 ('the DPA').

#### **Is the withheld information personal data?**

19. Personal data is defined by the DPA as any information relating to a living and identifiable individual. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them, has them as its main focus or impacts on them in any way. The withheld information is the settlement sum relating to the removal of the previous Parish Clerk. The Commissioner is satisfied that an individual's financial settlement on leaving employment is personal data as defined in the DPA.

#### **Would disclosure breach the Data Protection Principles?**

20. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness. In considering fairness, the Commissioner takes into account the nature of the information, the reasonable expectations of the data subject, the potential consequences of disclosure and balances the rights and freedoms of the data subject with the legitimate public interest in disclosing the information. In order to make a decision on this exemption, the Commissioner asked the council questions relating to fairness. The council did not respond to these questions directly but instead said that it has considered all the factors presented by the Commissioner and believes that they are effectively overridden by its obligation to conform to the settlement agreement.

### **Nature of the information and reasonable expectations**

21. The Commissioner recognises that people have an instinctive expectation that a public authority, in its role as a responsible employer and data controller, will not disclose certain information. He considers that information relating to the termination of an individuals' employment will attract a strong general expectation of privacy as it is inherently personal to the data subject.
22. This expectation of privacy was affirmed in the Tribunal case of *Trago Mills (South Devon) Limited v Information Commissioner and Teignbridge District Council*<sup>2</sup>. The Tribunal upheld the Commissioner's decision that disclosure of the details of a severance agreement would be unfair and thus contravene the first data protection principle. The Tribunal stated that:

"Even without an express confidentiality provision, an individual would have a reasonable expectation that the terms on which his employment came to an end would be treated as confidential. The question we have to consider is, not whether X's severance package was a private transaction (it clearly was), but whether the factors in favour of disclosure should lead us to conclude that, on balance, disclosure would not have represented an unwarranted interference with that right."
23. The settlement agreement in this case specifically states that the parties shall keep the existence and terms of the settlement confidential.
24. Taking the above into consideration, the Commissioner considers that the data subject would have had a reasonable expectation that the specific details of the settlement would not enter the public domain.

### **Consequences of disclosure**

25. In this case, the Commissioner considers that disclosure would amount to an infringement into the privacy of the data subject which has the potential to cause damage and distress.

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<sup>2</sup> Appeal number EA/2012/0028

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

26. In considering 'legitimate interests in disclosure', such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.
27. In this case, the Commissioner recognises that there is a legitimate public interest in the expenditure of public money, especially in a climate of considerable public sector cuts.
28. As both the Commissioner and the Tribunal have made clear in the Trago Mills case previously cited, the legitimate interests of the public in knowing the financial details of termination of employment must be weighed against the individual's right to privacy. The Tribunal made clear that such decisions should be made on the expectations of privacy held by 'the reasonably balanced and resilient individual'. The Tribunal concluded that:

"We do not find that the Council's duty to be transparent and accountable about the expenditure of public money outweighs the requirement to respect the former employee's reasonable expectation of privacy. Accordingly, we conclude that disclosure would have breached the data protection principles."

### **Conclusion on the analysis of fairness**

29. Taking all of the above into account, the Commissioner concludes that it would be unfair to the data subject concerned to release the requested information. Disclosure would not have been within the data subject's reasonable expectations and the loss of privacy could cause unwarranted distress. He acknowledges that there is a legitimate interest in the expenditure of public money but does not consider that this outweighs the data subjects strong expectations of, and rights to, privacy.
30. As the Commissioner has decided that the disclosure of this information would be unfair, and therefore in breach of the first principle of the DPA, he has not gone on to consider whether there is a Schedule 2 condition for processing the information in question. The Commissioner has therefore decided that the council was entitled to withhold the information under the exemption at section 40(2).

## **Section 17 - Refusal of request**

31. Section 17(1) provides that –

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.”

32. Section 17(7) provides that –

“A notice under subsection (1), (3) or (5) must –

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50.

33. The Commissioner wrote to the council on 13 August 2015 noting that the response to this request did not fully comply with the provisions of the FOIA in that it did not:

- state whether or not the information was held in a recorded form;
- provide the applicant with a copy of the information, or;
- issue a refusal notice which complies with the provisions of Section 17 of the FOIA.

34. The Commissioner also informed the council that section 17 requires a refusal notice to state any relevant exemptions or other exclusions from the duty to comply, why any exemptions or exclusions apply, and why, if applicable, in all the circumstances of the case, the public interest in maintaining the exemptions outweighs the public interest in disclosing the information. He also stated that the refusal notice should include details of any appeal/internal review procedure the council has, as well as their rights to complain to the Commissioner under section 50.



35. In not citing specific exemptions in its initial responses of 27 and 30 July 2015 to the request for information, the Commissioner considers that the council has breached section 17(1)(b) of the FOIA.
36. The Commissioner notes that the council conducted the internal review in accordance with its published complaints procedure. It's initial responses of 27 and 30 July 2015 did not inform the complainant of the complaints procedure or of the right to complain to the Commissioner in breach of sections 17(7)(a) and 17(7)(b) respectively.

## Right of appeal

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

38. 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.
39. 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**  
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**SK9 5AF**