

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 7 March 2016

**Public Authority:** Peterlee Town Council  
**Address:** Shotton Hall  
Peterlee  
County Durham  
SR8 2PH

#### Decision (including any steps ordered)

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1. The complainant requested information about investigations into the health and personal circumstances of Peterlee Town Council's ("the council") town clerk and the costs relating to her employment.
2. The Commissioner's decision is that section 40(2) is engaged and the council is not required to comply with the request.
3. The Commissioner does not require the council to take any steps.

#### Request and response

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4. On 23 July 2015, the complainant wrote to the council and submitted a long and detailed set of information requests which he designated A – O and 1 – 24 about financial and other arrangements made by the council with its town clerk. The council provided some information initially and more during the course of the Commissioner's investigation. Also during the Commissioner's investigation, the complainant made clear that his principal concerns were the following:

*A. Please provide full details of the criminal allegations made by Councillors in respect of senior employees and any external advisors. I also request a written summary from the councillor who received the verbal findings from the police at the conclusion of their investigation.*

*I am aware that an allegation has been communicated to the council that, the town clerk, during the period of time she was claiming she*

*could only work 50% of her normal time due to ill health, she was also working for [name] Parish Council, as the Responsible Financial Officer.*

*F. What was the outcome of the investigation into this allegation?*

*J. In the highly unlikely event that [the town clerk] is still in receipt of pay, please provide a copy of the minutes, of the council meeting, which identifies the exceptional reasoning for this?*

*K. Who carried out the first stage interview in accordance with the Sickness Management Policy? (role as opposed to name will suffice) ?*

*L. Who has carried out any subsequent interviews (role as opposed to name will suffice) ?*

*M. Who carried out the final stage interview in accordance with the Sickness Management Policy (role as opposed to name will suffice) ?*

*N. If there is no identified date, in the near future, for the Town Clerk's return to work, please confirm that ill-health capability procedures are already in train and when it is envisaged that an ill health capability hearing will take place.*

*13. Please provide full details of the cost to the taxpayer where national and local guidance on sick pay has not been followed. ?*

*14. Can you please provide anonymised details of the number of times in the past 3 years, where any employee of Peterlee Town Council has received full pay, after being on sick leave for more than 6 months, and full or half pay after 12 months on sick leave. ?*

*15. Please provide full costs to the tax payer in respect to the answer to question 14. ?*

*16. I am aware that you have a Sickness Management Policy in place, dated September 2014. Did you have a written policy in place before this date? If so can you please supply a copy. ?*

*17. It is my understanding that an internal audit identified that the Town Clerk failed to ensure that adequate policies were in place for the effective management of staff including, staff performance, absence management time management (including work time directive), etc. Please provide a copy of this or any other audit report produced in the last 4 years.*

*23. I am aware that the Town/parish council employs a relatively large number of gardeners, park attendants and associated team leaders. However, a decision has been made to employ an additional gardener,*

*referred to as a 'seasonal gardener', please provide a copy of the business case for this additional expense to the tax payer. ?*

## **Scope of the case**

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5. The complainant contacted the Commissioner on 27 August 2015 to complain about the way his request for information had been handled.
6. The council initially refused the request relying on the exemption at section 14(1) FOIA (vexatious or repeated requests) but during the Commissioner's investigation relied instead on the exemptions at section 40(2) (personal information) and section 41(1) (information provided in confidence) of the FOIA.
7. On 10 February 2016 the council provided further information to the complainant regarding the remaining parts of the request and confirmed to the Commissioner that this was its final position.
8. The council responded to parts J, K, L, M of the request and said that it did not hold the information requested in parts 13, 15, 16, 23 of the request. The Commissioner and the complainant accepted the council's position on these.
9. The Commissioner has considered the council's application of the section 40(2) and 41(1) FOIA exemptions to the outstanding parts of the request namely A, N, 14 and 17.
10. The Commissioner has received and considered representations from both the complainant and the council. He has obtained copies of the withheld information (including the relevant audit report at part 17 of the request) and has reviewed it in full, together with additional background information provided in confidence by the council. He is also aware of some contemporary media reports about connected matters.

## **Reasons for decision**

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### **Section 40 – personal data**

11. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.

***Is the requested information personal data?***

12. The first step for the Commissioner to determine is whether the requested information constitutes personal data, as defined by the Data Protection Act 1998 (the "DPA"). If it is not personal data, then section 40 cannot apply.
13. The two main elements of personal data, as defined in section 1(1) of the DPA, are that the information must 'relate' to a living person and that the person must be identifiable from it. 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, and has them as its main focus or impacts on them in any way. The information can be in any form, including electronic data, images and paper files or documents.
14. In this case, the complainant requested specific documents relating to a named individual. Having reviewed the relevant withheld information, the Commissioner is satisfied that all of it constitutes information that falls within the definition of 'personal data' as set out in section 1(1) of the DPA. He has reached this conclusion on the basis that the information comprises personal data relating to various named individuals.

***Is any of the information sensitive personal data?***

15. Sensitive personal data is defined in section 2 of the DPA. It is personal data which falls into one of the categories set out in section 2 of the DPA. In this case, the Commissioner considers the relevant categories are:
  - (e) *his physical or mental health or condition,*
  - ...
  - (g) *the commission or alleged commission by him of any offence, ...*
16. The Commissioner is satisfied much of the withheld information can be considered to be sensitive personal data. This is because it relates to matters either of health or of alleged actions by council employees. The Commissioner is satisfied that, due to the small number of council employees, it is not possible to anonymise the information specified at part 14 of the request.
17. Having accepted that the information requested constitutes either the personal data or the sensitive personal data of living individuals other than the applicant the Commissioner must next consider whether disclosure would breach one of the data protection principles.

***Would disclosure breach one of the Data Protection principles?***

18. The Commissioner has considered whether disclosure of the requested information would breach any of the data protection principles as set out in schedule 1 of the DPA. He considers the most relevant principle in this case is the first 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”.*

***Would it be fair to disclose the requested information?***

19. In answering the question of fairness, the Commissioner recognises the importance of considering whether the data subjects have consented to disclosure and/or whether the data subjects have actively put some or all of the requested information into the public domain. The Commissioner also considers it appropriate to consider the consequences of any disclosure and the reasonable expectations of the data subjects.
20. The complainant said that his information request was in relation to matters of electoral and public interest. He said that there appeared to be no official oversight of the actions of the council. He was especially concerned at the precept for the council which, he said was one of, if not the, most expensive in the country. He was also concerned about the conduct of the town clerk and about payments which he understood had been, and still were being, made. He told the Commissioner that he had concerns about the honesty and integrity of the council and of some of its senior officers. He said that he understood, from media reporting and from hearsay, that the town clerk had made a claim against the council and that a senior officer had been interviewed by the police. He said that the tax payers had a right to know about matters that might needlessly cost them hundreds of thousands of pounds.
21. The Commissioner noted that on 29 April 2015 the council issued a public statement in which it offered the town clerk its full and unreserved apologies for events that had compelled her to submit a grievance and for any distress or upset caused to her. The complainant told the Commissioner that he believed the council had not at the time been in receipt of the full facts and should not have issued this public apology.

22. For the avoidance of doubt, the Commissioner makes clear that, in his reading of the withheld information, he has seen nothing to cause him concern with regard to the honesty and integrity of the relevant data subjects.
23. The council said that disclosure of the requested information would breach the first data protection principle, which says that data must be processed fairly and lawfully. To be processed fairly it must comply with the data subjects' reasonable expectations. The council said that the people named in the withheld information would not reasonably expect their personal data to be disclosed in this way. The people who had been involved in the council's investigation had done so with the assurance of an express statement that the information they provided would be held confidentially. The council pointed to the Commissioner's guidance that information relating to an internal investigation or disciplinary hearing would carry a strong general expectation of privacy and noted the support of the then Information Tribunal for that position. The council added that it had not identified any legitimate public interest in disclosure of the withheld information.
24. The Commissioner considered the consequences of disclosure for the data subjects and was satisfied that disclosure would cause significant distress to all of the parties and could adversely affect the future activities of at least some of them if it became generally known.
25. Despite the reasonable expectations of individuals and the fact that damage or distress may result from 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 its disclosure.
26. In considering these 'legitimate interests', such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.
27. The Commissioner acknowledges the legitimate expectations of tax payers that they will be fully informed of expenditure being incurred by the council and the reasons for it. However he understands that the normal local government systems of accounting, auditing and reporting will provide the information needed to satisfy the reasonable expectations of tax payers in this matter without the need for further additional disclosures under the FOIA. He does not accept that disclosure of the withheld personal information, much of it sensitive personal data, is a legitimate or proportionate way of satisfying the reasonable public interest.
28. He recalled from the case of *Waugh*, (*Rob Waugh v Information Commissioner and Doncaster College* (EA/2008/0038, 29 December

2008)) that information relating to an internal investigation or disciplinary hearing will carry a strong general expectation of privacy.

***Conclusion***

29. In the light of the nature of the information and the reasonable expectations of the individuals concerned, the Commissioner is satisfied that release of the withheld information would not only be an intrusion of privacy but could potentially cause unnecessary and unjustified distress to the data subjects. He considers these arguments outweigh any legitimate interest in disclosure. He has therefore concluded that it would be unfair to disclose the withheld information - in other words, disclosure would breach the first data protection principle. He therefore upholds the council's application of the exemption at section 40(2).
  
30. As the Commissioner has concluded that it would be unfair to the individuals concerned to disclose the withheld information and that doing so would contravene the first principle of the DPA, he has not gone on to consider whether disclosure would be lawful or whether one of the Schedule 2 DPA conditions would be met. However, his initial view is that no Schedule 2 condition would be met, nor indeed a schedule 3 condition. The exemption provided by section 40(2) is, therefore, engaged and the Commissioner did not proceed to consider the other exemption cited in the alternative, that at section 41(1) FOIA.

## Right of appeal

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31. 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)

32. 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.
33. 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**  
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