

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 12 July 2016

**Public Authority:** Derbyshire County Council  
**Address:** County Hall  
Matlock  
Derbyshire  
DE4 3AG

#### Decision (including any steps ordered)

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1. The complainant has made two requests to Derbyshire County Council ("the council") for information about a council officer's declaration of interests. The council withheld information in response under the exemption provided by section 40(2) of the Freedom of Information Act ("the FOIA"). The complainant contested the council's application of this exemption.
2. The Commissioner's decision is that the council has correctly withheld the information under section 40(2).
3. He does not require any steps to be taken.

#### Request and response

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##### Request 1

4. On 1 August 2015 the complainant requested information of the following description:

*I wish to make the following request for information under the Freedom of Information Act 2000 and this is with regards to Council Officer's declaration of interests, please supply a copy from all the register's for [redacted name] whose present position is [redacted job title] all financial and/or non-financial interests from the date of commencement of her employment with the council to the present date.*

5. On 24 August 2015 the council responded. It confirmed that relevant information was held but was exempt from disclosure under section 40(2).
6. The complainant requested an internal review on 25 August 2015, in which he widened the scope of the request:

*1) Can the council confirm or deny that the officer has made any declarations of interest since the commencement of the officer's employment with the council to the present date. 2) Has the council given permission for the officer to hold any outside interests.*

7. The council provided the outcome of this on 22 September 2015. It maintained its position that all held information relevant to the request was exempt under section 40(2).

#### Request 2

8. On 23 September 2015 the complainant made a second information request:

*Can the Council therefore confirm or deny that it was aware of the existence of the consultancy company.*

9. On 22 October 2015 the council responded. It stated that the information was not held.
10. The complainant requested an internal review on 27 October 2015
11. The council sent the outcome of its internal review on 27 November 2015. It revised its position and confirmed that all held information relevant to the request was exempt under section 40(2).

#### **Scope of the case**

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12. The complainant contacted the Commissioner on 28 December 2015 to complain about the way his request for information had been handled, and specifically that the council has incorrectly withheld information under section 40(2).
13. The Commissioner therefore considers the scope of this case to be the determination of whether the council has correctly applied section 40(2).

## Reasons for decision

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### Section 40(2) – The personal data of third parties

14. 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.*

15. 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?

16. 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...*

17. 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 information that has been withheld and has identified that it specifically relates to the individual named in the complainant's request. On this basis the Commissioner accepts that the information in its entirety is the personal data of the individual.

### Would disclosure breach the data protection principles?

18. 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.

19. 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*

20. When considering whether a disclosure of personal information 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.
21. In this case the council has proposed that the named individual would not have a reasonable expectation of their personal data being disclosed into the public realm. This is because the information was provided by the individual to the relevant Director within the council in order to comply with the council's Code of Conduct, of which a copy has been provided to the Commissioner for reference. The Code of Conduct does not specify that the information may be publically disclosed, and the council has explained whilst there is a legal requirement for elected members to declare their interests publically, there is such requirement for council employees. As such the withheld information forms part of the individual's personnel record and is used to manage their employment.
22. The council also considers that the individual holds a relatively junior role within the council (i.e. not classed as a senior officer), and that this, in conjunction with the nature of the information (which the council considers relates heavily to the individual's private life) would result in the individual having a reasonable expectation that the information would remain confidential.
23. The council has also confirmed that whilst the individual is willing for the council to confirm that a declared interest is held, they have specifically not consented to its public disclosure.

*Consequences of disclosure*

24. The council considers that disclosure would cause distress to the individual, who is employed at a relatively junior role and would not expect this level of public scrutiny.

25. The council further considers that disclosure would not serve a public benefit, because the nature of the interest has already been relayed to the individual's Director so that necessary steps can be taken to safeguard public decision making.
26. The complainant has advised the Commissioner that he considers there is a strong public interest in ensuring that the council is aware of, and takes necessary steps in respect of, any interests that a council officer may have, and particularly where those interests may directly relate to the officer's specific role and responsibilities.

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

27. The Commissioner has considered the submissions of both parties, and has also reviewed the withheld information.
28. The Commissioner has issued specific guidance<sup>1</sup> on the relevance of section 40(2) to 'registers of interests' as maintained by public authorities. As explained in that guidance, the Commissioner recommends that a nuanced approach is taken, based on factors including the seniority of the individual and the extent to which disclosure of the information may impact on their private life.
29. In the circumstances of this case, it is evident that the individual holds a relatively junior role within the council, and that whilst that role may involve some decision making, there are also checks and balances in place in the form of line managers. It is also clear that an interest has been declared, and that confirmation that this declared interest exists has been provided to the complainant.
30. The Commissioner also recognises that that declared interest relates to the individual's private life outside of their current employment by the council. As the First-tier Tribunal ("the Tribunal") detailed in the case of *Greenwood v Information Commissioner and Bolton Metropolitan Borough Council* (EA/2011/0131 & 0137), there must be a greater expectation of privacy in situations where the interest relates to matters independent of the council officer's role. It is also evident to the Commissioner that the withheld information contains the personal data of third parties who are connected to the individual, and who are not

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1187/section\\_40\\_requests\\_for\\_personal\\_data\\_about\\_employees.pdf](https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf)

employed by the council. In such cases the Tribunal elaborated that this can increase the expectation of non-disclosure.

*The Commissioner's conclusion*

31. 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.
32. However, having considered the circumstances of this case the Commissioner has concluded that releasing the withheld information would not be within the expectations of the individual to whom it pertains. The individual holds a junior role within the council, and the withheld information relates to their private life. It is also understood by the Commissioner that there are appropriate checks and balances in place to ensure the integrity of decision making processes associated with the specific officer.
33. On this basis the Commissioner is satisfied that disclosure of the information would not be fair under principle 1 of the DPA, and that section 40(2) of the FOIA has been correctly applied.

## Right of appeal

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34. 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)

35. 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.
36. 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**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**