

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 November 2016

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

Decision (including any steps ordered)

1. The complainant has requested information on the non-payment or late payment of council tax by elected members in the last two financial years. The council confirmed that one elected member had received a final notice for non-payment, and that a liability order was obtained in respect of another. At review stage, the council disclosed the amounts of arrears, but withheld the names of the elected officials under section 40(2).
2. The Commissioner's decision is that Craven District Council (the council) has incorrectly withheld the names of the elected officials under section 40(2).
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the withheld information.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 1 April 2016, the complainant requested the following information:

"I am seeking some information on the possible non-payment or late payment of council tax by elected members in each of the last two financial years (2014/15 and 2015/16).

Specifically I would like to know if any reminders or notice of arrears were served on any elected members in each year and, if so, which members they were and what the amount involved was in each case.

In addition, I would like to know if any elected members were served with a summons to court and, if so, which members they were and what the amount involved was in each case."

6. On 6 April 2016 the council responded. It stated that one councillor had received a final reminder, and that it had issued a liability order to another councillor. The council withheld the names and the outstanding amounts under section 40(2).
7. The complainant asked for an internal review. The council provided the outcome of this on 5 May 2016. It maintained its position in respect of the names, but provided the amounts owed in both cases.

Scope of the case

8. The complainant contacted the Commissioner on 5 May 2016 to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of this investigation to be to determine whether the council was correct to rely on section 40(2) to withhold the names of the elected officials.

Reasons for decision

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

10. 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.

11. 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?

12. 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...

13. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the Data Protection Act ("the DPA"). In this instance the Commissioner is satisfied that the names of the two elected officials in relation to their council tax arrears are their personal data.

14. In the case of one individual, the Commissioner is also satisfied that the information is sensitive personal data under section 2(h) of the DPA as the council had instituted proceedings to recover the unpaid council tax. The Commissioner agrees that this information is on any proceedings for any offence committed or alleged to have been committed, the disposal of such proceedings or the sentence of any court in such proceedings.

Would disclosure breach any of the data protection principles

15. 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.

16. 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 individuals

17. 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.
18. In this case, the council has argued that disclosure of the councillors' names in relation to their non-payment or late payment of council tax would not be within their reasonable expectations. It has explained that the conduct of elected members is governed by a Code of Conduct, which is based on the provisions of section 27 of the Localism Act 2011. Section 27(2) of the Localism Act states that the Code of Conduct only applies to elected members when they are acting in that capacity.
19. The council maintains that the payment of council tax is carried out in a private capacity, and so the Code of Conduct does not apply to them in the payment of council tax. The council relies on the case of *Livingstone v Adjudication Panel for England* [2006] EWHC 2533 (Admin) which held that the Code of Conduct did not apply to local authority elected members when acting in a private capacity.
20. The council therefore argues that the disclosure of the councillors' names in relation to council tax is not within their reasonable expectations as it is a private and not a public matter, and so the Code of Conduct governing their behaviour does not apply.
21. The Commissioner recognises that for the general public, it would certainly be beyond their reasonable expectations for information about their council tax arrears to be disclosed to the world at large. However, in view of the Upper Tier Tribunal case *Haslam v Information Commissioner and Bolton Council* [2016] UKUT 0139 (AAC), the Commissioner considers that elected officials should have a greater expectation of scrutiny regarding their payment of council tax.
22. It is clear from the tribunal's decision that the critical element in balancing the rights of data subject with any legitimate public interest is

the councillor's position as an elected official with public responsibilities. The tribunal stated that non-payment of council tax was directly and significantly relevant, particularly in view of section 106 of the Local Government Finance Act 1992, which bars a councillor from voting on the council's budget if he has a council tax debt outstanding for over 2 months.

23. The council has confirmed that in both cases, the amount of arrears exceed 2 months. Therefore, the Commissioner is satisfied that section 106 of the Local Government Finance Act is brought into play.
24. The tribunal's position was that whilst "*in the case of an ordinary member of the public, the payment or non-payment of council tax is essentially a private matter*" (para 51), "*it is not reasonable for a councillor to expect not to be identified where he is summoned for non-payment of council tax*". The tribunal acknowledged that whilst "*the identification of a defaulting councillor involves an intrusion into his private life...it is an intrusion that a councillor must be taken to have accepted when taking office*" (para 54).
25. The tribunal accepted that there might be exceptional cases in which the personal circumstances of a councillor were "so compelling" that their name should be protected. However, the tribunal found that even though disclosure might cause some distress to the councillor, and damage to his reputation, this was not sufficient to outweigh the significant legitimate public interest in disclosure. In short, elected officials are not in the same position as other members of the public when it comes to disclosure of their names. They can expect their names to be disclosed in circumstances where ordinary members of the public might expect the opposite.
26. The council has provided details of mitigating personal circumstances in relation to one of the councillors, which it considers supports its position that their name should not be disclosed. Given the nature of this submission which concerns the personal circumstance of the individual, disclosure of which could lead the individual being identified, the Commissioner has not replicated them here.
27. However, the council has submitted no such personal circumstance arguments regarding the other councillor.

Consequences of disclosure

28. At the time of the request, the council argued that disclosure of the information could have had a real detrimental effect on the individuals, this was because the request was made in the run up to local elections. As such, disclosure of council tax arrears could disadvantage these

individuals if they were standing for re-election. The council noted that this detrimental effect would be exaggerated if the elected member was standing against an individual who had not previously been elected, and so had not had information disclosed about any council tax arrears they may be in.

29. With regard to the councillor about whom the council has submitted details of mitigating personal circumstances, the council states that disclosure of their name could potentially cause anxiety and distress. It has argued that given the personal circumstances, disclosure would be unfair and would not best serve the public interest.

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

30. In this case, the council and the Commissioner both recognise that under schedule 2 of the DPA, the main condition for processing that may apply in this case is condition six, which states that the processing will be fair where it is for the legitimate interests pursued by the data controller or a third party, and is not unwarranted by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.
31. The complainant is a journalist, and therefore has a legitimate interest in the information. The judge in the previously referenced tribunal case found that as there was no other effective means for a journalist to obtain this information, disclosure of the identity of the councillor was "*necessary to achieve the objectives of transparency and accountability*" (paragraph 67).
32. In balancing the rights and freedoms of the individuals, the Commissioner has had regard to the tribunal decision. It is clear that by virtue of section 106 of the Local Government Finance Act, and by virtue of the fact that they are elected representatives, the individuals in question should expect a greater level of scrutiny than a member of the public.
33. The Commissioner recognises that public figures must expect a high degree of scrutiny particularly in regard to their functions in office. Whilst recognising an individual's Article 8 rights to a private life under the Human Rights Act 1998, there may be occasions (as in the circumstances of both the Tribunal case, and this case) when what happens in a public figure's private life impairs their ability to satisfactorily perform their public duties.
34. The Commissioner acknowledges the council's position that the section 27(2) of the Localism Act provides that the Code of Conduct governing an elected official's behaviour does not apply to their personal life.

However, weighing this against the tribunal decision, which is binding on the Commissioner, she finds that this is a case where what has happened in the councillors' private lives has impacted on their ability to perform their public duty in relation to budget setting as prescribed by section 106 of the Local Government Finance Act.

35. The council has outlined that compliance with section 106 is monitored by the council's Chief Finance Officer, and failure to report arrears is a criminal offence. It therefore argues that disclosure of a specific councillor's council tax arrears would only occur when the individual themselves makes the disclosure, not the council. Therefore, the checks and balances that exist are sufficient to meet the legitimate interests in disclosure.
36. The Commissioner has also considered the mitigating personal circumstances which were advanced by the council in respect of one individual. She recognises that given the personal nature of the reasons, disclosure may well cause anxiety and distress to the individual. However, having regard to the nature of the mitigating circumstances of the individual in the tribunal case, she is not convinced that the personal circumstances in this case are so compelling as to warrant the protection of their name.
37. It is always the case that senior employees of a public authority, and elected officials would have a greater expectation that personal data about them may be disclosed. This is due to the responsibilities they have for public money and decision making and also to fairly and honestly represent the public.

Conclusions

38. The Commissioner understands the council's arguments regarding the reasonable expectations of the individuals for information about their council tax arrears not to be disclosed. Particularly in view of the Localism Act and also the mitigating circumstances of one individual.
39. However, given the binding nature of the tribunal decision, and the fact that the arrears of both individuals extend beyond 2 months, the Commissioner finds that the council was incorrect to withhold the names of both councillors.

Right of appeal

40. 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

41. 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.
42. 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