

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 June 2018

Public Authority: Derbyshire County Council

Address: County Hall
Smedley Street
Matlock
Derbyshire
DE4 3AG

Decision (including any steps ordered)

1. The complainant has requested recorded information from Derbyshire County Council which concerns the Council's proposals for its restructuring of its senior management team. The Council provided the complainant with a copy of the Local Government Association report but advised him that it was withholding some information in reliance on sections 40(1), 40(2), 42 and 36 of the FOIA.
2. The Commissioner's decision is that Derbyshire County Council has correctly applied the exemptions to disclosure provided by sections 40(1), 40(2), 42 and 36 of the FOIA.
3. The Commissioner requires the public authority to take no further action in this matter.

Request and response

4. On 13 June 2017, the complainant wrote to Derbyshire County Council and requested information in the following terms:

"Please provide me with a copy of the information as set out below: -

- All correspondence and documents sent by officers and Members of Derbyshire County Council, to and received from [person 1 – name redacted] and [person 2 – name redacted] at the LGA, [person 3 – name redacted] and Outreach Solutions, [person 4 – name redacted] and Jenny Tozer Communications Ltd, [person 4 –

name redacted], [person 5 – name redacted], [person 6 – name redacted] and [person 7 – name redacted].

- All plans/proposals associated with Council's senior management review/model and Report produced by the LGA.
- All correspondence and document relating to discussions and meetings with any third party (for example but not limited to, individuals listed above or organisations e.g. SOLACE, LGA) relating to the provision of any role or service for the Council associated in any way with the Council's senior management review/model or similar.
- All correspondence and document relating to discussions and meetings with any third party, relating to the potential use or engagement of the LGA to undertake any role or service for the Council associated in any way with the Council's senior management review/model or similar.

For the avoidance of doubt, "All correspondence and documents" referred to above should include, but should not be limited to, all reports, notes, Council e-mails/texts, personal emails/text which relate to Council business and all other paper and electronic records."

5. The Council wrote to the complainant on 19 June to acknowledge receipt of his request for information. The Council asked the complainant to confirm the timescale for the scope of his request and the names of the Members and officers who he believes hold the information he asked for.
6. On 21 June, the complainant informed the Council that he seeks information from 1 January 2017. With regards to naming the Members and officers who could potentially hold information relevant to his request, the complainant informed the Council that he was not able to help as the information could be held by anyone. He therefore asked the Council to make a thorough and robust search and he asserted that he knew certain Members use their personal email accounts for Council business.
7. The Council wrote to the complainant on 26 June to thank him for the clarification of his request and to advise him of the Council's intention to respond to the request by 19 July 2017.
8. On 19 July, the Council responded to the complainant's request by confirming that it holds relevant information and by sending him a copy of the LGA report. The Council advised the complainant that it had withheld some information in reliance on sections 40(1), 40(2), 42 and 36 of the FOIA.

9. The Council subsequently conducted an internal review of its handling of the complainant's request and on 21 August it wrote to the complainant to inform him that the section 40(1), 40(2), 42 and 36 exemptions had been applied appropriately.

Scope of the case

10. The complainant contacted the Commissioner 5 July 2017 to complain about the way his request for information had been handled.
11. The complainant informed the Commissioner that the Council has refused and only partly fulfilled his request and he asserted that the Council has used "...the excuse of seeking clarification as a cynical ploy" to delay responding to his request in advance of a consultation meeting which had been scheduled for Friday 7 July.
12. The complainant also asserted that the Council holds considerably more information relating to his request which it is unreasonably withholding and he advised the Commissioner that, from correspondence he has had with the LGA, the Director of Legal Services has been in correspondence with the LGA regarding his employment and this information has been withheld.
13. The complainant holds the belief that there has been considerably more correspondence with the LGA and he has informed the Commissioner of the existence of a file – Case number 71074, which has also been withheld.
14. Having considered the complainant's representations, the Commissioner determined that the focus of her investigation should be to determine whether the Council has handled his request in accordance with the FOIA, and specifically, whether the Council is entitled to rely on sections 40(1), 40(2), 42 and 36 of the FOIA to withhold information within the scope of the request and whether any further information is held.
15. The Commissioner informed the complainant that her enquiries, and any decision notice issued in respect of his complaint, would be limited to the information held by Derbyshire County Council which is not considered to be his personal data.

Reasons for decision

16. The Council has provided the Commissioner with a file of evidence and answers to her enquiries.

The extent to which the Council holds recorded information relevant to the complainant's request

17. Section 1 of the FOIA states that

"(1) Any person making a request for information to a public authority is entitled—

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.

18. The Commissioner has sought to determine whether the Council holds any information which meets the terms specified by the complainant in his request. To make this determination the Commissioner applies the civil test which requires her to consider the question in terms of 'the balance of probabilities': This is the test applied by the Information Rights Tribunal when it has considered whether information is held in past cases.

19. The Commissioner has investigated whether the Council holds recorded information relevant to the complainant's request by asking the Council questions about the searches it has made to locate the information which the complainant seeks and questions about the possible deletion/destruction of information which might be relevant to the complainant's request.

The Council's representations

20. The Council considered the complainant's request to be extremely broad and therefore it sought to agree the scope of the request with the complainant. The complainant gave the Council confirmation that his request relates to documents dating from 1 January 2017: He did not however identify any specific members or officers to whom his request related or which would provide the Council with a focus for its searches. Rather, the complainant advised the Council that, "I have a reasonable expectation a thorough and robust search is carried out".

21. Having indicated to the complainant the identities of those officers and members who had likely been involved in the issue of concern to the complainant, the Council proceeded on the basis that it was reasonable to carry out a search against those individuals for information relevant to the this request. In the Council's opinion, this approach was adequate, proportionate, reasonable and thorough.

22. An officer in the Council's Legal Team contacted each of the named officers and elected members and asked them to search for all

documents falling within the scope of the complainant's request. All of the officers and elected members responded to state that they had searched for documents within the scope of the request and either provided copies of relevant documents or stated that they had none.

23. Some of the officers named in the complainant's request no longer worked for the Council – named persons 5, 6 and 7, and had not done so for some time. Those former council employees did not have access to their Council email accounts when the restructuring process was being considered. The Council therefore determined that it was not necessary or proportionate to contact those persons or search their closed email accounts.
24. Where searches had taken place, the individual officers and members were asked to search their email accounts and files. Most of the information collected from these searches comprised emails from individual email accounts which, in compliance with the Council's ICT Security Policy, requires information to be stored only on Council systems.
25. One Councillor provided some emails which had been sent to his personal email account even though he had been advised that personal accounts should not be used for council business. In the Council's opinion, the fact that the councillor disclosed these emails showed that a thorough search had been undertaken.
26. The Council advised the Commissioner that any information relevant to the complainant's request would be held electronically, although the Council legal file also holds relevant information in manual form. That said, the Council has confirmed that both formats were searched for information within the scope of the request.
27. There is no statutory requirement for the Council to retain the information requested by the complainant, which concerns the Council's management structures. Nevertheless the Council also advised the Commissioner that no information relevant to the complainant's request has been deleted or destroyed.
28. The Commissioner has considered the Council's representations in respect of the searches it has made for information falling within the scope of the complainant's request: The Commissioner accepts the Council's reasons for limiting its searches to those officers and members who were likely to have had some involvement in the issue of concern to the complainant and she agrees that, given the size of this public authority, the searches undertaken were reasonable and proportionate.
29. On the grounds that the Council's representations are both plausible and persuasive, the Commissioner has decided that, on the balance of probabilities, the Council holds no further recorded information other

than the LGA report and the information it has withheld in reliance on sections 40(2), 42 and 36 referred to above.

30. The Commissioner's decision is that the Council has complied with section 1 of the FOIA. She has therefore gone on to consider the exemptions relied on by the Council to withhold various pieces of information.

Section 40 – personal data

Section 40(1) – where the information is the personal data of the requester

31. Under section 40(1) of the FOIA, information which is the requester's personal data is exempt information from disclosure.
32. The Council's file of evidence contains all of the information which has been sent to the complainant in response to his subject access request (SAR) under section 7 of the Data Protection Act 1998.
33. The information which the Council sent to the complainant is comprised of documents which relate to the complainant's employment within the Council, including recruitment materials to his role and the Council's proposals for restructuring that role.
34. The Commissioner has examined the information to which the Council has applied section 40(1) of the FOIA.
35. The Commissioner is content that the withheld information constitutes the complainant's personal data as defined by section 1 of the Data Protection Act.
36. The Commissioner's decision in respect of the complainant's personal data is that the Council has properly applied section 40(1) of the FOIA to that information and it is therefore entitled to withhold it.

Section 40(2) – where the information is the personal data of third party individuals

37. 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, where the disclosure of that personal data would be in breach of any of the data protection principles.
38. The first step for the Commissioner to determine is whether the withheld information constitutes personal data.
39. Personal Data is defined by section 1 of the Data Protection Act 1998 ("the DPA"). If the information is not personal data then the Council will not be able to rely on section 40.

40. Section 1 of the DPA defines personal data 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 intention of the data controller or any other person in respect of the individual."

41. The Council has identified all of the information which has been withheld in reliance on section 40(2) of the FOIA. This information is contained in the Council's file of evidence.

42. In the case of certain pieces of information, the Council has stated, "This is not within the scope of the request as it is internal exchanges, and therefore, not with third parties as set out in the request".

43. The Commissioner has considered the terms of the complainant's request and particularly the terms of the third bullet point of that request. It is clear to the Commissioner that the complainant has included correspondence from all third parties to fall within the scope of his request. The complainant has not excluded internal exchanges in his request and therefore the Commissioner has determined that the documents where section 40(2) has been applied in the alternative, are within the scope of the request.

44. The Commissioner has identified items 16, 17, 19, 21, 23, 24, 25, 33, 34, 40 and 86 as being relevant for her consideration of the Council's application of section 40(2).

45. The Council has advised the Commissioner that it does not consider any of the withheld information constitutes sensitive personal data and it has confirmed that disclosure would breach the first data protection principle.

46. The first data protection principle states:

"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."

47. The Council has told the Commissioner that the withheld information relates to a redundancy process affecting the individuals identified in the documents and that the information includes consultation and responses at an initial stage.

48. The Council accepts that the withheld information relates to senior public officials, but asserts that the individuals would hold a strong expectation that their personal data would remain confidential.
49. The Council did not seek the views of the individuals concerned because it believes that there is a very strong basis for maintaining confidentiality of this material.
50. The Council does not believe that any of the conditions in Schedule 2 apply in this case. In particular it does not believe that the sixth condition would be appropriate as disclosure of information about a redundancy process would prejudice the rights and freedoms of the employees involved.
51. The Commissioner has examined the information contained in the documents referred to above at paragraph 43. Much of that information is comprised of individual items, or short exchanges, of private correspondence between the Council and its employees in respect of the Council's consultation and their continued employment.
52. The Commissioner is satisfied that the withheld information is the personal data of third parties. She is further satisfied that, on the basis they the individuals concerned would have no expectation that their personal data would be made public, disclosure would be unfair to the individuals and breach the first data protection principle.
53. In view of the above, the Commissioner has not found it necessary to consider whether disclosure would meet any of the conditions in Schedule 2 of the Data Protection Act.
54. The Commissioner's decision is that the Council is entitled to withhold items 16, 17, 19, 21, 23, 24, 25, 33, 34, 40 and 86 in reliance on section 40(2) of the FOIA.

Section 42 – legal professional privilege

55. Under section 42 of the FOIA, information is exempt from disclosure if it is subject to a claim of legal professional privilege.
56. The Council has identified recorded information which it claims is subject to legal professional privilege. This information is comprised of exchanges between the Council's in-house legal team and client officers or elected members, or between external legal advisors including counsel.
57. The withheld information is entirely restricted to the seeking of and obtaining legal advice relating to the proposals to restructure the Council's management team and to potential litigation.

58. The Council has confirmed to the Commissioner that the privilege claimed has not been lost.
59. The Commissioner has examined the information which the Council has withheld from the complainant in reliance on section 42. This information contained in items 14, 18, 29, 31, 32, 41, 44, 45, 48, 52, 67, 74, 76, 77, 83, 85 and 87 in the Council's file of evidence.
60. The Commissioner has found that the information being withheld in reliance on section 42 of the FOIA constitutes communications between a professional legal advisers and their clients and those communications contain legal advice provided in the legal adviser's professional capacity. The Commissioner is satisfied that the sole or dominant purpose of the withheld communications is the provision of legal advice.
61. The Council has assured the Commissioner that the withheld information consists of exchanges between its in-house legal team and client officers or members, or between external legal advisers or counsel. These exchanges consist entirely of the seeking of and obtaining legal advice on the implications of the proposed changes to the Council's senior management structure and the potential for future litigation.
62. The Council informed the Commissioner that the proposed changes to its management structure resulted in a claim being made against the Council, which has since been withdrawn. The Council has assured the Commissioner that the professional legal privilege attached to the withheld exchanges has not been lost.
63. Having examined the withheld exchanges, the Commissioner is satisfied that the exemption provided by section 42 of the Act is properly engaged. The Commissioner must now consider whether it is in the public interest for the Report to be disclosed.

The public interest

Arguments favouring the disclosure of the requested information

64. The Commissioner recognises that some weight must always be given to the general principle of achieving accountability and transparency through the disclosure of information held by public authorities. This assists the public in understanding the basis and how public authorities make their decisions.
65. Disclosure of information can help foster greater trust in public authorities and may, but not always, allow greater public participation in the decision making process.
66. In this case, the requested information concerns a significant restructuring of the Council's senior management team and it must be

recognised that disclosure would help the public to understand some of the issues considered by the Council in respect of this restructuring and particularly the reasons why the Council ultimately took its decision.

67. The Commissioner also acknowledges the likelihood that disclosure would allow the public to consider the quality of the legal advice which was provided to the Council.

Arguments in favour of maintaining the exception

68. In her previous decisions the Commissioner has expressed the view that disclosure of information relating to legal advice would have an adverse effect on the course of justice through a weakening of the general principle behind the concept of legal professional privilege. This view has also been supported by the Information Tribunal.
69. It is very important that individuals and public authorities are able to consult with lawyers in confidence and be able to obtain confidential legal advice.
70. Should legal advice be subject to routine or even occasional public disclosure, without compelling reasons, this could affect the free and frank nature of future legal exchanges and/or may deter the public authority from seeking legal advice in situations where it would be in the public interest for it to do so.
71. The Commissioner's published guidance on legal professional privilege states the following:

"Legal professional privilege is intended to provide confidentiality between professional legal advisors and clients to ensure openness between them and safeguard access to fully informed, realistic and frank legal argument, including potential weaknesses and counter arguments. This in turn ensures the administration of justice."

72. Where a public authority is faced with a legal challenge, or a potential legal challenge, it is important that the authority can defend its position properly and fairly. Should the public authority be required to disclose its legal advice, its opponent would potentially be put at an advantage by not having to disclose his own position or legal advice beforehand.
73. The Commissioner considers that there will always be a strong argument in favour of maintaining legal professional privilege. It is a long-standing, well established and important common law principle. The Information Tribunal affirmed this when it stated:

"...there is a strong element of public interest inbuilt into privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt interest...It is important that public

authorities be allowed to conduct a free exchange of views as to their legal rights and obligations with those advising them without fear of intrusion, save in the most clear case..."

74. This does not mean that the counter arguments favour public disclosure need to be exceptional, but they must be at least as strong as the interest that privilege is designed to protect.

Balance of the public interest arguments

75. The Commissioner appreciates that there is a general public interest in public authorities being as accountable as possible for the decisions they make.
76. In this case the Council is responsible for making informed decisions in relation to a significant restructuring of its senior management team. The Commissioner recognises the importance attached to the Council being able to obtain full, frank and confidential legal advice to enable it to make informed decisions which ultimately involve the spending or saving of public funds.
77. The Council has advised the Commissioner that the complainant brought a claim against the Council in respect of its decision to restructure its senior management and, although this claim has recently been withdrawn it is not known whether the complainant is considering other action.
78. The public interest in maintaining legal professional privilege is a particularly strong one. To outweigh the inherent strength of legal professional privilege would normally require circumstances where there are substantial amounts of public money at stake, where the decision would significantly affect large numbers of people, or where there is evidence of misrepresentation, unlawful activity or a significant lack of appropriate authority.
79. Having considered this case, the Commissioner considers that there are no factors present which would equal or would outweigh the particularly strong public interest inherent in this exception. The Commissioner has therefore decided that the public interest favouring the continued withholding the requested information is greater than the public interest favouring disclosure. The Commissioner is satisfied that the public interest is best served in this case by maintaining the council's right to obtain legal advice in confidence and for this information to be withheld. The Commissioner has decided that the council has properly applied section 42 to the withheld information

Section 36 – where disclosure would prejudice the effective conduct of public affairs

80. Section 36 allows a public authority to withhold recorded information if its disclosure would prejudice the effective conduct of public affairs.

81. The Council has confirmed to the Commissioner that it is relying on section 36(2), This section states:

"36 (2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act –

(b) would, or would be likely to, inhibit –

(i) The free and frank provision of advice, or

(ii) The free and frank exchange of views for the purpose of deliberation , or

(c) Would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs."

82. The Council has identified the following documents in its file of evidence where section 36 has been applied, either on its own or in conjunction with another exemption:

14, 24, 25, 26, 27, 28, 29, 30, 31, 32, 35, 36, 38, 39, 42, 43, 45, 46, 47, 49, 50, 51, 52, 53, 54, 55, 59, 60, 61, 62, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 88 and 89.

83. In respect of many of the items referred to above, the Council has stated its belief that they do not fall within the scope of the complainant's request. The Council has stated that some of these documents are internal exchanges and therefore not with third parties as set out in the request.

84. The Commissioner considers that the documents are within the scope of the complainant's request for the reason given above. She considers that the complainant's request includes correspondence from all third parties, regardless of whether they are internal to the Council or external.

85. The application of section 36 requires the public authority's "qualified person" to consider the withheld information and the exemption which applies to it. This consideration cannot be delegated to another person within the public authority.

86. The Commissioner asked the Council to provide her with evidence that the qualified person considered the application of section 36 personally. The Council did this by providing the Commissioner a completed pro-

forma document which identifies the issues relevant to the complainant's request, and in particular to the Council's application of section 36.

87. In addition to the assessment document, the Council confirmed to the Commissioner that the qualified person had access to copies of the withheld information as well as having access to all material relating to the proposed changes. The Council also confirmed that the qualified person was very familiar with the issues which underpin the proposals and this request.
88. The qualified person is the Director of Legal Services at Derbyshire County Council, Mr John McElvaney and his opinion was given on 20 July 2017.
89. The withheld information consists of exchanges of draft reports and supporting documents – including job descriptions and person profiles, which were generated to facilitate the deliberation of proposals relating to changes in the Council's senior management structure.
90. The pro-forma document which records the opinion of the qualified person, records that, "the project is significant to the Council in financial and strategic terms. The review and associated procedures are on-going and it is important the deliberations on future direction can take place in a safe space where officers and consultants are able to give their opinions in a free and frank way".
91. The pro-forma records that, "If these exchanges are published then this is likely to inhibit the officers and consultants in giving such free and frank advice and exchanging views in a free and frank way", and, "It is crucial that those engaged in the deliberations and advising the Council's senior officers and elected members are able to express their views freely and openly".
92. In the qualified person's opinion the withheld information engages sections 36(2)(b)(i) and 36(2)(b)(ii) of the FOIA and the Council asserts that it is 'extremely likely' that the prejudice identified in those sections would occur should the information be disclosed.
93. It is clear to the Commissioner that the Council considers that disclosure of the withheld information would result in a 'chilling effect' to its decision-making process, whereby discussions between its staff would be inhibited. Disclosure of the withheld information would inhibit free and frank discussions in the future and would result in a loss of frankness and candor. This would damage the quality of advice and deliberation and lead to poorer decision making.
94. The Commissioner has considered the nature and contents of the withheld information. She accepts the qualified person's opinion that its

disclosure would likely prejudice the exchange of views and advice. The Commissioner accepts therefore that the Council requires a 'safe space' to consider the issues surrounding the restructuring of its senior management team. It is for this reason the Commissioner has decided that sections 36(2)(b)(i) and (ii) are engaged.

The Public Interest

95. The Council's application of sections 36(2)(b)(i) and (ii) is subject to a consideration of the public interest. The Commissioner is required to consider whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

96. In *Guardian and Heather Brooke v the Information Commissioner and the BBC* (EA/2006/001 and EA/2006/0013), the Tribunal provided some general principles about the application of the public interest test in section 36 cases as follows:

- The lower the likelihood is shown to be that the free and frank exchange of views or provision of advice would be inhibited, the lower the chance that the balance of the public interest will favour the exemption.
- While the Commissioner cannot consider whether prejudice is likely (that is for the qualified person to decide), she is able to consider the severity, frequency or extent of any likely prejudice.
- Since the public interest in maintaining the exemption must be assessed in the circumstances of the case, the public authority is not permitted to maintain a blanket refusal in relation to the type of information sought.
- The passage of time since the creation of the information may have an important bearing on the balancing exercise. As a general rule, the public interest in maintaining the exemption will diminish over time.
- In considering factors against disclosure, the focus should be on the particular interest that the exemption is designed to protect, in this case the effective conduct of public affairs through the free and frank exchange of views.
- While the public interest considerations in the exemption from disclosure are narrowly conceived, the public interest considerations in favour of disclosure are broad ranging and operate at different levels of abstraction from the subject matter of the exemption.

- Disclosure of information serves the general public interest in promotion of better government through transparency, accountability, public debate, better public understanding of decisions, and informed and meaningful participation of the public in the democratic process.

Public interest arguments in favour of disclosing the requested information

97. As stated above, the Commissioner considers that some weight must always be given to the general principle of achieving accountability and transparency. She considers that the disclosure of publicly held information generally assists the public to understand how public authorities make their decisions and carry out their functions.
98. Disclosure may foster trust in public authorities and may also allow greater public participation in the Council's decision making processes.

Public interest arguments in favour of maintaining the exemption

99. The main thrust of the Council's position is its belief that it is essential for its officers to have free space to consider the issues raised the proposed changes to the structure of its senior management team. It is necessary for its officers to discuss matters rigorously, with candour and to record these discussions accurately.
100. Releasing the withheld information would likely result in a chilling effect whereby the Council's officers and consultants would be reticent to discuss matters, to provide candid opinions and to have them recorded. In the context of this case, it is apparent to the Commissioner that this reticence would be real and it would result in detriment to the Council's decision making process.
101. The withheld information is relatively recent. The Commissioner must have particular regard to this fact.

The Commissioner's decision

102. In this case the requested information relates to the restructuring of the Council's senior management team. This has significantly affected existing members of the Council's staff and it will have a marked impact on the Council's strategic and financial future.
103. Whilst the Commissioner must give some weight to the factors which favour the disclosure of the withheld information, the amount of weight is not sufficient enough to counter the detriment that disclosure would have in respect of the Council's need for 'safe space'.
104. The Commissioner is in no doubt that disclosure of the withheld information would have a significant negative impact on the Council's

decision making process: She agrees with the Council that, in the circumstances of this case, it is necessary to have a 'safe space' to receive candid advice from its officers and to discuss that advice without the threat of disclosure. In the Commissioner's opinion this need is greater than the public interest in knowing the details of the advice contained in the withheld information.

105. The Commissioner's decision is that the public interest favours the continued withholding of the information requested by the complainant. She has therefore decided that the Council is entitled to rely on sections 36(2)(b)(i) and(ii) to withhold all of information where this exemption has been applied.

Other matters

106. The Commissioner asked the Council to for its comments regarding the complainant's assertion that the Council's request for clarification was a 'cynical ploy' to delay responding to his request.

107. The Council categorically denies the complainant's assertion. It points out that the complainant's request was extremely broad, being open-ended in terms of the officers and members from whom the information was sought and also in terms of the time span.

108. The fact that the complainant responded to the Council by limiting the time period of his request suggests that the complainant accepted the Council's approach as being reasonable.

109. The Council asserts that it would have been "entirely disproportionate and unreasonable for the Council to have carried out a search for documents in relation to all of its employees". The Council further asserts that most of its employees would never have had any knowledge of, let alone information concerning, the matters included in the complainant's request.

110. The Council informed the Commissioner that the same would apply in in respect of the 64 elected members of the Council.

111. The Commissioner accepts that the Council's request for clarification was made in good faith. In the Commissioner's opinion, there is no ulterior motive behind the Council request, other than to gain clarification of the scope of the complainant's request and to enable the Council to respond to it in a sensible manner.

112. In addition to making a complaint about the Council's handling of his information request, the complainant has also complained about the use of a least one councillor using his personal email account for Council

business. The complainant asserts that the councillor's use of his personal email address allows information to leave the control of the County Council and therefore it could be shared by anyone unknown to the Council.

113. In view of the complainant's assertion, the Commissioner has determined that this should be investigated separately under case reference RFA0753677.

Right of appeal

114. 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

115. 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.

116. 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
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