

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 11 June 2018

**Public Authority:** Kirklees Council

**Address:** Civic Centre 3  
Market Street  
Huddersfield  
HD1 1WG

#### Decision (including any steps ordered)

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1. The complainant has requested information from Kirklees Council which concerns remarks made by a councillor at a public meeting, where the Councillor is alleged to have said that the complainant had cost the Council £38,000. The Council corrected the amount referred to by the complainant in his request and it provided him with a schedule of its calculation of how a figure of £11,000 was arrived at. The Council made some redactions from the schedule disclosed to the complainant by virtue of its application of section 40(2) of the FOIA.
2. The Commissioner's decision is that Kirklees Council has correctly applied the provisions of section 40(2) to information it withheld from the complainant. The Commissioner has also decided that the Council has breached section 10 of the FOIA for failing to respond to the complainant's request within the required twenty working day compliance period.
3. The Commissioner requires the public authority to take no further action in this matter.

#### Request and response

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4. On 23 August 2017, the complainant wrote to Kirklees Council and requested information in the following terms:

*"I went to a Cabinet meeting on 22 August 2017. At this meeting Councillor Sheard stated that I have cost this council £38,000. I now require a detailed breakdown of how this figure has been arrived at.*

*I would like a detailed breakdown of how much Councillor Sheard has been paid since he became a councillor and his expenses from this date.*

*Detail year on year from when he became a councillor."*

5. The Council acknowledged its receipt of the complainant's request on 23 August and it informed him that the deadline for its response would be 21 September.
6. The Council responded to the complainant's request on 26 September 2017 and advised him that the figure was in fact £11,000. To substantiate its claim the Council provided the complainant with a schedule to explain its calculations. Some information was redacted from the schedule on the grounds that it is personal data and exempt from disclosure under section 40 of the Freedom of Information Act 2000.
7. In respect of the second part of the complainant's request, the Council advised him that it holds some of the information he asked for, dating back to 2004-2005. The Council provided the complainant with copies of the information it holds but also informed him that the information is already publicly available on the Council's website<sup>1</sup>.
8. The Council advised the complainant that the records of allowances and expenses paid to Councillors before 2004-2005 are no longer held as they are outside of the retention period for this information.
9. On 16 November 2017, the complainant contacted the Council to complaint about its response to his request. The complainant raised the following points which he asked the Council to focus on as the basis of an internal review:
  1. Failure to respond within the legislative timescales.
  2. Various items were sent to the complainant in 'drips and drabs'.
  3. Some of the information sent to the complainant should not have been redacted.
  4. Some of the information disclosed by the Council should have been disclosed in response to previous requests.

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<sup>1</sup><http://democracy.kirklees.gov.uk/ecSDDisplay.aspx?NAME=SD231&ID=231&RPID=504519832>

5. The response was badly set out; pages should have been numbered and/or accompanied by a header sheet which could have been used to identify and refer to particular areas of concern more easily.
6. Some responses were sent out by recorded delivery and others were not.
11. The Council completed its internal review and sent its conclusions to the complainant on 29 November 2017. The Council responded to each of the elements listed above. Elements 1, 3 and 5 were considered to be relevant to the complainant's information request under the FOIA, whereas elements 2, 4 and 6 appear to relate to the disclosures made by the Council in respect of the complainant's subject access request which was submitted on the same day – 23 August 2017.
12. In respect of element 1, the Council accepted that its response was sent outside of the twenty day compliance period required by section 10 of the FOIA. The Council explained that its response had been prepared earlier with the intention that it would be sent out on 8 September, Unfortunately, due to a clerical error, that response was overlooked until the Council sent its response to the complainant's subject access request on 26 September.
13. In respect of element 3, the Council upheld its decision to redact the names of its junior officers from the schedule of how the £11,000 figure had been arrived at.
14. In respect of element 5, the Council said that, "...the information sent in response to the FOI request was set out with sufficient clarity to enable you to identify how the Council had arrived at the figure quoted.

## **Scope of the case**

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15. The complainant contacted the Commissioner on 2 October 2017 to complain about the way his request for information had been handled. The complainant stated that:
  - "(1) No information received as of today's date,
  - (2) Both requests out of time.
  - (3) Operating illegally – Please prosecute."
16. In view of the complaint submitted by the complainant, the Commissioner determined that her investigation should be focussed on whether the Council is entitled to withhold the information which it redacted from the schedule of costs sent to the complainant on 26 September.

## Reasons for decision

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

17. 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 information personal data?*

18. The first step for the Commissioner to determine is whether the withheld information constitutes personal data.

19. 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.

20. 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."*

21. The Council has provided the Commissioner with an unredacted copy of the schedule of costs sent to the complainant on 26 September 2017. The information which the Council redacted, and therefore withheld from the complainant in reliance on section 40(2), was highlighted for the Commissioner's consideration.
22. The withheld information is comprised of the names of 7 current and former junior members of the Council's staff and also the housing benefit claim numbers relating to 2 members of the public who were complainant's tenants.
23. The Council's position is that the withheld information is personal data of the individuals it has identified. The Council has also considered whether the information is those persons' sensitive personal information as defined by section 2 of the Data Protection Act 1998 and it determined that it is not.
24. The Commissioner agrees with the Council that the withheld information is constitutes the personal data of individuals who can be identified from

that information. The Commissioner must now consider whether disclosure of the withheld information would breach any of the data protection principles.

25. In this case, the Commissioner has identified the first data protection principle as being relevant to the complainant's request. This requires 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.
26. The Council has also provided the Commissioner with its rationale to support of its application of section 40(2). It considers that disclosure of the withheld information would breach the first data protection principle on the grounds that it would be unfair to the individuals concerned.
27. The Council argues that the names of the 5 current and 2 former junior members of staff is information which relates to their public life rather than their private life.
28. That said, the Council asserts that, whilst current senior managers and decision makers can reasonably expect their identities to be disclosed into the public domain, more junior members of staff, especially those not in public facing roles and those who are not regularly or specifically involved in direct contact with the applicant, would not have this expectation.
29. Furthermore, those former more junior members of staff can reasonably expect their identities not to be disclosed into the public domain.
30. The Council advised the Commissioner that it did not consult the 5 current members of staff to seek their consent for disclosure.
31. This is because the Council has generally not disclosed names of more junior staff in response to information requests made by this applicant as a result of persistent and unwarranted contacts with numerous Council officers over a long period.
32. The Council advised the Commissioner that at the time the complainant made this particular request, the complainant would persistently contact its officers once he knew their names. This pattern of behaviour resulted in the need to provide the complainant with a designated single point of contact. The Council informed the Commissioner that the complainant's "overly persistent" engagement with some members of staff has caused

concern for those individuals and this lay behind the Council's decision to withhold their names.

33. With regards to the housing benefit claim numbers of 2 members of the public, the Council advised the Commissioner that these persons were former tenants of the complainant. The Council considers this information to relate to those individuals' private life and in the Council's opinion, they would have the reasonable expectation, as members of the public that details relating directly to them would remain confidential to the Council and would not be disclosed into the public domain.
34. The Council told the Commissioner that it has not asked whether the two individuals would be willing to consent to the disclosure of their personal data. The Council considered it was not appropriate to do so.
35. In addition to believing that disclosure of the withheld information would be unfair to the data subjects identified by the Council, the Council confirmed that it had also considered whether any of the conditions in Schedule 2 of the Data Protection Act which would allow their personal data to be disclosed under this request. However, in the circumstances outlined above the Council asserted that disclosure of the withheld information would be inappropriate.

#### *The Commissioner's decision*

36. The Commissioner has decided that the withheld information is the personal data of identifiable persons and therefore she finds that section 40(2) is engaged.
37. The Commissioner agrees with the Council that the identifiable individuals would have no reasonable expectation that their personal data would be put into the public domain as a result of the complainant's request. Therefore the Commissioner has decided that disclosure of their personal data would be unfair and would constitute a breach of the first data protection principle.
38. Although it is not necessary for the Commissioner to consider whether condition 6 of Schedule 2 of the DPA is engaged, the Commissioner has no difficulty in finding that this condition is not met.
39. Condition 6 of Schedule 2 of the DPA allows disclosure of personal data if:

"The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject."

40. Whilst the complainant may have the belief that disclosure of the withheld information is in some way 'necessary', the Commissioner has found nothing which would confirm this. She considers that there is nothing in this case which would merit disclosure of the withheld personal data.
41. The Commissioner's decision is that Kirklees Council has correctly applied section 40(2) of the Freedom of Information Act to the information it has withheld from the complainant.

**Section 10 – time for complying with a request for information**

42. The Commissioner has noted the Council's acceptance that it responded to the complainant's request outside of the twenty day compliance period provided by section 10 of the FOIA. This acceptance is in the Council's internal review letter of 29 November 2017.
43. The Commissioner acknowledges that a clerical error lay behind this failure, nevertheless she is obliged to find that the Council has breached section 10 of the FOIA.

## Right of appeal

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44. 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)

45. 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.
46. 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**