

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 March 2018

Public Authority: Seaford Town Council
Address: 37 Church St
Seaford
BN25 1HG

Decision (including any steps ordered)

1. The complainant has requested information in relation to the process of dismissal of a named individual by Seaford Town Council ("the Council). The Council refused the request, citing the non-disclosure exemption at section 40(2) (personal information) of the FOIA.
2. The Commissioner's decision is that the Council was entitled to rely on section 40(2) to refuse the request.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 5 October 2017, the complainant wrote to the Council and requested information in the following terms:

"Will you please let me know

Was [name redacted] dismissed as confirmed in the minutes of the Disciplinary Sub Committee of [date redacted] and the Personnel Committee of [date redacted]

Or

*Did **[redacted]** leave in accordance with the Settlement Agreement approved by council on **[date redacted]** (minutes Full Council **[date redacted]**)*

Or

*Did **[redacted]** leave in accordance with the Settlement Agreement approved by Council on **[date redacted]** (minutes Full Council **[date redacted]**)*

Or a combination of any?

All the above is in the public domain."

5. The Council responded on the same day. It stated that "*The minutes of the **[date redacted]** Disciplinary Committee are accurate. The minutes of the two Town Council meetings you refer to were to deal with a potential legal issue prior to the pending Employment Tribunal taking place and did not affect the former employees [sic] employment status.*"
6. Remaining dissatisfied with the response, on 4 November 2017 the complainant reformulated the request asking for:
 - the details of which grounds were upheld in the disciplinary hearing; and
 - whether or not the Council received a reference for the former employee **[name redacted]**, from their subsequent employer.
7. The Council responded on 6 November 2017. The Council explained that it was relying on section 40(2) of the FOIA to withhold the personal data sought in the first part of the request. In relation to the second part of the request concerning the references, the Council informed the complainant that it does not hold any information.
8. In the same letter, the Council informed the complainant that should he remain dissatisfied with the outcome, to contact the Commissioner.

Scope of the case

9. The complainant contacted the Commissioner on 6 November 2017 to complain about the way his request for information had been handled.
10. During the course of the Commissioner's correspondence with the complainant, it became clear that the complainant had contacted both the former and current employers of the individual named in the requests in relation to the references and received the same response. Therefore, the complainant confirmed to the Commissioner that he was

happy to remove the second part of the request from the scope of the Commissioner's investigation.

11. Consequently, the Commissioner has focussed her investigation on whether the Council correctly applied the exemption under section 40(2) to the complainant's first request of 4 November 2017.

Reasons for decision

Section 40 – personal information

12. 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.

13. Personal data is defined in section 1(1) of the Data Protection Act 1998 (DPA) as:

"data which relate to a living individual who can be identified –

(i) from those data, or

(ii) from those data and other information which is in the possession of, or is likely to come into 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."

Is the requested information personal data?

14. The first step for the Commissioner to determine is whether the requested information constitutes personal data, as defined by the DPA. If it is not personal data, then section 40 cannot apply.
15. The definition of personal data is set out in section 1 of the DPA. This provides that, for information to be personal data, it must relate to a living individual and that individual must be identifiable from the information. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decision affecting them, has them as its main focus or impacts them in any way. The second part of the test is whether the withheld information identifies any living individual.
16. The requested information relates to a misconduct case in respect of a former employee of the Council. This information is contained in a letter from the Council to its former employee, announcing the termination of contract of employment. This document was provided by the Council on

the Commissioner's request to see the withheld information. In the Commissioner's view it is clear that the withheld information 'relates' to a living person and that person is the focus of the request. Therefore, it is clear that this information constitutes personal data for the purposes of section 1(1) of the DPA.

Would disclosure be unfair and/or unlawful?

17. Personal data is exempt if either of the conditions set out in sections 40(3) and 40(4) of the FOIA are met. The relevant condition in this case is at section 40(3)(a)(i) – where disclosure would breach any of the data protection principles. In this case the Commissioner has considered whether disclosure of the personal data would breach the first data protection principle. This states that "*personal data shall be processed fairly and lawfully*".
18. The complainant maintains that essentially the requested information is in the public domain, in the minutes published on the Council's official web-page. However, he seeks clarification from the Council in relation to the grounds of dismissal. According to the complainant's finding from the minutes, the Council initiated disciplinary proceedings on three counts of gross misconduct, but concluded the proceedings by dismissing the employee based on two counts.
19. In response to the Commissioner's questions, the Council claims that the information contained in the letter announcing the termination of employment contract as a consequence of disciplinary proceedings contains detailed personal data of the former employee, disclosure of which would be damaging to the data subject's personal life and career.
20. In addition, the Council asserted that in line with its dedication to transparency and accountability, it "*...has published the summary outcome in the form of minutes to the disciplinary hearing which the applicant has a copy from the Council website...*"
21. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual to whom the personal data relates and whether there is a legitimate public interest in the disclosure of the information in question.

Likely expectations of the data subject

22. When considering the consequences of disclosure on a data subject, the Commissioner will take into account the nature of the withheld information. She will also take into account the fact that disclosure under FOIA is effectively an unlimited disclosure to the public at large, without conditions.

23. The Council informed the Commissioner that the former employee has *"...been approached to see if **[redacted]** is willing to release the data but **[redacted]** has refused and threatened to sue the Council if it is released."*
24. The Commissioner notes that the withheld information contains detailed personal information of the former employee and other third parties. In addition the document is labelled as *'Private and Confidential'*.
25. In light of this, the Commissioner is satisfied that the former employee would have had a reasonable expectation that their personal information would be kept confidential and not passed on to third parties without their consent.

The legitimate public interest

26. Given the importance of protecting an individual's personal data, the Commissioner's default position in cases where section 40(2) has been cited is in favour of protecting the privacy of the individuals. Therefore in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so.
27. The complainant argued that the former employee of the Council *"...is now in a position of great responsibility, it is in the public interest to know for which acts of Gross Misconduct **[redacted]** was dismissed.[sic]"*
28. The Commissioner accepts that members of the public may wish to know the circumstances relating to the departure of a particular official of the Council's staff. She also accepts that there is a legitimate interest in understanding more clearly any issues that may have occurred during a disciplinary process within a public authority. However, such legitimate interest must be weighed up against the distress disclosure would cause and the intrusion into the private lives of those data subjects. It is the Commissioner's view in this case that disclosure would cause significant distress and intrusion and any legitimate interest in this type of information is outweighed by these effects.
29. Moreover, the Commissioner has carefully examined the existing documents already published on the website of the Council and she has concluded that the information published so far in the minutes provide a considerable amount of information on this matter. Disclosure of the withheld information does not appear to provide any further meaningful contribution for the public with regard to disciplinary procedure itself.

Conclusion

30. Having considered all the circumstances of this case, the Commissioner has concluded that releasing the withheld information under FOIA would not be within the expectations of the individual. This is because the information consists of detailed reasons for the individual's dismissal containing material of a subjective nature, the disclosure of which could cause significant distress to the data subject.
31. In view of the above, the Commissioner finds that disclosing the withheld information would contravene the first data protection principle because it would be unfair. Therefore, she has concluded that section 40(2) of the FOIA was correctly applied.

Right of appeal

32. 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

33. 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.
34. 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

Alun Johnson
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