

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 12 June 2019

Public Authority: Mid & East Antrim Borough Council

Address: The Braid
1-29 Bridge Street
Ballymena
BT43 5EJ

Decision (including any steps ordered)

1. The complainant has requested information from Mid & East Antrim Borough Council ('the Council') about its attendance at a dinner hosted by Ian Paisley, MP. The Council disclosed some information and withheld the remainder, citing the exemption at section 40(2) (personal data) of the FOIA.
2. The Commissioner's decision is that the Council was entitled to rely on section 40(2) of the FOIA to refuse to disclose the names of local business people it had invited to attend the dinner as its guests. However, she found that it was not entitled to rely on section 40(2) to refuse to disclose the names of the Council employees who attended the dinner. The Commissioner also found breaches of section 1 and section 17 of the FOIA with regard to the Council's handling of the request.
3. The Commissioner requires the Council to take the following steps to ensure compliance with the legislation.
 - Disclose to the complainant the names of all Council employees who attended the dinner.
4. The Council 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.

Background

5. The Council sponsored a table at the North Antrim Annual Business and Community Dinner 2017, which entitled it to invite up to ten guests to attend the dinner. The dinner was billed as an *"annual constituency dinner"* hosted by Ian Paisley, MP, to *"...bring together key members of the community and local businesses to share views and experiences"*. The keynote speaker was the Secretary of State for Environment, Food and Rural Affairs, Michael Gove, MP.
6. The Northern Ireland Audit Office and the Electoral Commission subsequently looked into the event, after claims that it was effectively a fundraising event for the Democratic Unionist Party ('the DUP'), something the DUP has denied¹. The Commissioner is unaware of the findings of these investigations.

Request and response

7. On 30 September 2017, the complainant wrote to the Council and, referring to the Council's decision to attend the dinner, and a tweet sent by a senior member of staff during it, requested information in the following terms:

"1. The twitter account is at [https://twitter.com/\[name redacted\]](https://twitter.com/[name redacted]). Is this an official council account?

2. Was the 'North Antrim business dinner' the same event as that referred to in Section 12.5 of the 8 August full council meeting?

3. If so, how did [name redacted] learn of the event?

4. Please provide all correspondance [sic] between the DUP, including Ian Paisley Jr, and Mid and East Antrim council in respect of this event?

5. Please provide all correspondance [sic] between Mid and East Antrim council and all other persons in respect of this event.

6. Who attended the event from Mid and East Antrim council? For each person attending, what was the cost?

¹ <https://www.bbc.co.uk/news/uk-northern-ireland-43788174>

7. Who from the agri-food sector attended at Mid and East Antrim council's invitation and what was the cost per person?

8. Did the council query the event organisers as to where the proceeds of the event would go? If so what was the answer?

9. How did the council decide on who from the agri-food sector should be invited?

10. Did the delegation meet Michael Gove afterwards?

11. Did the delegation engage in a question and answer session in relation to the agri-food sector afterwards?

12. The Newsletter reported on 29 September 2017

"One individual present at the event told the News Letter that Ian Paisley Jr, who succeeded his father as North Antrim MP, had extolled the quality of Bushmills Whiskey and that bottles of Black Bush were part of the fundraising effort."

13. Did any member of the council delegation or any of the council's agri-food sector guests make any other contribution to the fund-raising effort over and above the cost of the dinner? If so, who made contributions and how much was each contribution?

Read more at: <http://www.newsletter.co.uk/news/michael-gove-addresses-dup-fund-raising-dinner-1-8174605>"

8. The Council responded on 30 October 2017. It addressed each point individually. For point (2), it confirmed that it was the meeting publicly discussed in Council minutes. For point (6), it named two elected members who had attended on behalf of the Council. For point (7), it clarified that the cost of the table was £1,500, but refused to name the invited guests, on the grounds that section 40(2) of the FOIA was engaged. For point (13), it said that the dinner was not a fundraising event.

9. The complainant requested an internal review on 31 October 2017, challenging its response to points (6), (7) and (13) as follows:

- Point (6) – the complainant asked why the Council had not disclosed the attendance of a senior member of staff (who she pointed out had tweeted from the event) and other Council employees, who she believed from the Council's own minutes (referred to in her request) had also attended. She also asked it to clarify the cost per person of them attending.

- Point (7) – the complainant challenged the application of section 40(2) to withhold the information, and specifically the attendees' expectation of privacy. She said that prior to and immediately after the dinner, the Council appeared to have considered it a high profile and prestigious event, referencing it several times in meeting minutes. She pointed to the senior employee's tweet from the dinner, the fact that it took place in a public venue, and that the Council had apparently taken its own publicity photos of the occasion. She also asked the Council to clarify the cost per person of the invited guests.
 - Point (13) – the complainant asked the Council to clarify whether a raffle had taken place. If it had, she asked to know the recipient of the proceeds and whether any member of the Council's party had won.
10. The Council provided the outcome of the internal review on 16 January 2018. With regard to the cost per person, it said that the Council's outlay had been for a table, at a total cost of £1,500, to accommodate up to 10 guests. No individual tickets were purchased and so the Council did not hold the requested information.
 11. It upheld its application of section 40(2) to withhold the names of invited guests, referring to concerns about the onward use of the information if disclosed into the public domain, in light of adverse media coverage the event had subsequently attracted.
 12. It said it held no information in relation to a raffle and that it had previously disclosed all the information it held in relation to the nature of the event.

Scope of the case

13. The complainant initially contacted the Commissioner on 2 January 2018 to complain about the Council's failure to conduct an internal review, the outcome of which she subsequently received on 16 January 2018.
14. During the Commissioner's investigation, the Council explained that it had interpreted point (6) as being a request to know the names of the elected Council members that had attended the dinner and not the names of Council employees who were in attendance. It said that if Council employees' names were considered to fall within the scope of the request, they too would be exempt from disclosure under section 40(2) of the FOIA.
15. Following consultation with the complainant, the Commissioner considers the scope of this decision notice to be:

- Whether the Council complied with section 1 of the FOIA with regard to point (6); and
 - Whether it was entitled to rely on section 40(2) of the FOIA to refuse to disclose the information at points (6) and (7).
16. The Commissioner has commented on the way the internal review was conducted in the 'Other matters' section of this decision notice.

Reasons for decision

Section 1 – general right of access

Point (6) of the request

17. Section 1(1) of the FOIA states:

"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. With regard to the Council's presence at the dinner, the Council told the Commissioner that it had disclosed to the complainant the name of a senior member of Council staff who had attended the event, and who sent the tweet. The Commissioner notes that, in fact, the Council only disclosed that two elected Council members had been in attendance. It did not mention that any Council employees had attended when responding to point (6). The complainant highlighted, in a brief preamble to the request and in her internal review request, that the senior employee who sent the tweet and other Council employees appeared to have attended the event, however, this point was never acknowledged or addressed by the Council.
19. The Council subsequently confirmed to the Commissioner that in addition to the senior Council employee, other Council employees had attended the dinner. It said that it believed that information about them fell outside of the scope of the request, which it had interpreted as being only for details of elected Council members who had attended the dinner. It said:

"We would not assume that such requests include the names of staff in attendance at event [sic] unless specifically mentioned."

20. In considering the Council's position, the Commissioner has referred to the wording of the first part of point (6):

"Who attended the event from Mid and East Antrim council?"

21. When considered alongside the complainant's comments in the preamble to the request, the Commissioner is satisfied that the intended meaning of the request is quite clear, in that it seeks information about *all* representatives of the Council who were present at the dinner. The Commissioner considers the Council's restriction of the scope of the request to just elected members, to be an unreasonable interpretation of the request. She also considers its claim that it was not otherwise apparent to it that the request sought information about Council employees, to be at odds with the preamble to the request and the specific points the complainant made in her internal review request.
22. By failing to disclose to the complainant the name of the senior employee who attended the dinner (which it appeared to believe it had already disclosed, but had not) the Council breached section 1(1) of the FOIA. It should now take the steps specified in paragraph 3 to rectify this.
23. By failing to identify all the information that it held which fell within the scope of point (6) (ie the names of Council employees who attended the dinner), the Council committed a further breach of section 1(1). By failing to issue a refusal notice stating that the information about Council employees was exempt under section 40(2), it breached section 17(1) of the FOIA.

Section 40 – personal information

24. The FOIA exists to place official information into the public domain. Once access to information is granted to one person under the FOIA, it is then considered 'public' information which can be communicated to any individual should a request be received. As an exemption, section 40 operates to protect the rights of individuals in respect of their personal data.
25. 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.
26. The first step for the Commissioner is to determine whether the requested information constitutes personal data, as defined by the Data Protection Act 1998 ("the DPA" – the legislation in force at the time the request was received and processed by the Council). If it is not personal data, then section 40 cannot apply.

27. Secondly, if the Commissioner is satisfied that the requested information is personal data, she must establish whether the disclosure of that data would breach any of the data protection principles under the DPA.

Is the requested information personal data?

28. In order to rely on section 40(2), the requested information must constitute personal data as defined by the DPA. 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."

29. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
30. The withheld information comprises the names of the Council employees and invited guests, who attended the dinner. This is information which relates to them and which identifies them. The Commissioner is therefore satisfied that it constitutes personal data within the definition at section 1 of the DPA.
31. The Commissioner must then go on to consider whether disclosure would breach any of the data protection principles. It was the Council's position that disclosure would breach the first data protection principle.

Would disclosure contravene the first data protection principle?

32. The first data protection principle of the DPA states that personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in DPA schedule 2 is met.
33. In the case of a FOIA request, personal data is "processed" when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be fair, lawful and meet one of the DPA schedule 2 conditions. If disclosure would fail to satisfy any one of these criteria, then the information is exempt from disclosure.

34. The Commissioner has first considered whether disclosure would be fair. In considering whether disclosure of personal information is fair the Commissioner takes into account the following factors:

- the data subject's reasonable expectations of what would happen to their information;
- the consequences of disclosure (if it would cause any unnecessary or unjustified damage or distress to the data subject); and
- the balance between the rights and freedoms of the data subject and the legitimate interests of the public.

Reasonable expectations

35. In the Commissioner's view, a key issue to consider in assessing fairness is whether the data subject has a reasonable expectation that their information will not be disclosed. This expectation can be shaped by factors such as a data subject's general expectation of privacy, whether the information relates to them in a private or professional capacity and the circumstances in which the personal data was obtained.
36. Having clarified with the Commissioner that the scope of the request included the names of Council employees, the Council said that it was withholding the names of several employees who had attended the dinner "*in a support capacity*", to provide support to the elected members and the invited guests, and to handle the Council's media and communications surrounding the event. It said that the Council would not routinely give out the names of staff where they are in attendance as part of their duties.
37. The Commissioner has published guidance on requests for personal data about public authority employees². The guidance states that senior public authority employees, and those in public facing roles, should expect their actions, decisions and conduct to be subject to a higher degree of public scrutiny than those of their junior colleagues.
38. The Council has disclosed to the Commissioner the names and positions of the Council staff who attended the event. The Commissioner notes that all but one are senior members of Council staff, and that the remaining staff member occupies a public facing role. She further notes the Council's comments about media and communications for the event,

²https://ico.org.uk/media/fororganisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf

which suggests to her that at the time, it considered the dinner to be a prestigious event from which it might derive significant positive publicity. The tweet from the event, made in an official capacity, adds further credence to this point, as does the fact that, prior to the dinner, it was discussed in Council minutes, and the job titles of the recommended attendees were disclosed without any apparent concerns for their privacy. Finally, having conducted cursory internet searches, the Commissioner notes that each employee who attended the event has a work-related internet footprint which suggests they would have an expectation of being publicly identified when attending events of this nature, on behalf of the Council.

39. Turning to the reasonable expectations of the invited guests, the Council explained that it invited several members of the local 'agri-food' business community to attend the dinner as a networking exercise. It initially said that it would not have been within their reasonable expectation that their attendance at the event would be the subject of media reporting or public knowledge. When accepting the invitation, they were not told of the possibility of such publicity or asked to give their consent. It said that it did not believe their names were in the public domain.
40. However, the Council later commented to the Commissioner that under normal circumstances it would have featured the invited guests in its own, post-event publicity for the dinner. It said that as concerns started to emerge about the possible political nature of the dinner (ie that it might have been a fundraiser for a political party) it was decided that this may have reputational consequences for their businesses, and the Council decided against publicising its attendance at the event.
41. On the Council's claims about the invited guests' expectations, the Commissioner notes that the guests had accepted the Council's hospitality at a high profile event, at a public venue, hosted by a local MP, with a government minister as guest of honour. Their invitation was perceived as being an opportunity for business networking in the presence of a government minister, and so the guests could not be considered to have attended in a private capacity. The Commissioner considers that one of the clear benefits to the guests of attending such an event would be the enhancement to their business reputation that the attendant publicity would bring. She therefore does not consider the Council's claims that the invited guests would have had no expectation of publicity to be credible, and she considers the Council's admission that there was to have been post-event publicity featuring the invited guests, undermines these claims further. However, she does note the Council's comments that its guests accepted the invitation to attend without being aware that it might be a political fundraising event, and she has considered the implications of this, below.

Consequences of disclosure

42. As to the consequences of disclosure upon the data subjects, the question for consideration here is whether disclosure would be likely to result in damage and distress to them. The Council told the Commissioner:

"The Council is confident in its assessment that the information would be shared publicly with significant consequences included harassment, media exposure and reporting, online and social media commentary and reputational damage due to the critical and disparaging nature of the media reporting and the online publications by the requester to date."

43. It continued:

"The Council accepts that the requester, and others, have a particular perspective and opinion in relation to the Council's expenditure to attend this dinner and as such, the Council has sought to be as open and transparent as possible with the details requested and the decision making processes on the expenditure and attendance. The Council has fully complied with a number of external investigations including the NI Audit Office and the Electoral Office for Northern Ireland. The Council accepts that it bears the burden of any resulting public commentary or media coverage. However, it remains Council's position that ... the individuals listed above are in no way involved in the public debate on this matter as they played no role in the decision making and bear no responsibility for the Council's expenditure. There is no public interest that outweighs their rights to privacy, when the likely consequences of media reporting and online commentary are known."

44. It concluded:

"The Council's main concern is [sic] ensure that as part of their job, our staff and the private individuals who attended are not subject to unfair and public criticism. The impact on these individuals is not "embarrassment" and given the political nature of the event, exposes them to considerable personal, public and online abuse and harm to their business. It is through no fault of theirs that the event to which they were working or invited to attend was not, in reality, what the Council believed it to be..."

45. The Council also told the Commissioner that it believed that some or all of the invited guests might have declined the invitation, had it been apparent that the event was a political fundraiser.
46. The Commissioner's guidance notes that although employees may regard the disclosure of personal information about them as an intrusion

into their privacy, this, alone, may not be a particularly persuasive factor for withholding information, particularly if the information relates to their public role rather than their private life. If a public authority wishes to claim that disclosure would be unfair because of the adverse consequences on the employees concerned, it must be able to put forward some justification for this claim.

47. The Council said that it has been the subject of adverse criticism, disparaging comments, abuse and harassment, but it has offered no evidence in support of this, despite being given the opportunity by the Commissioner to do so. The Commissioner therefore does not know whether the behaviour it believes it has been subject to comprises robust critiques of its decisions and judgement, or whether it crosses the boundary of reasonable criticism into something which the Council, and its employees, should not be expected to tolerate.
48. The Commissioner understands that there was significant local media interest in the suggestion that the Council may have sponsored a table at a political fundraising dinner. She makes no judgment as to whether the dinner was, or was not, a fundraiser. However, that issue aside, media reports³ suggest that in sponsoring the table for £1,500, the Council breached its own policy on permitted spending levels for business dinners and similar events. That being the case, the Commissioner considers that the Council should expect to come under critical scrutiny from members of the public, and that that any criticism might, understandably, be highly robust.
49. The Commissioner noted above that the employees who attended the dinner are senior members of staff, and/or have public facing roles. She has no difficulty accepting that they attended the dinner in a working capacity and that it was not a social event or "perk". This renders any personal criticism of them, to some degree, redundant. They were the Council's "face" at the event, and as such, they were required to attend, as part of their job. In the absence of any evidence from the Council as to how these individual employees would suffer damage or distress as a result of the disclosure of their attendance at the event, the Commissioner considers that the Council's arguments in this regard carry little weight.
50. Turning to the consequences of disclosure on the invited guests, the Commissioner accepts that the possibility that they might have unwittingly attended a fundraising event on behalf of a political party would be something that would be likely to be of genuine concern to

³ <https://www.bbc.co.uk/news/uk-northern-ireland-47254860>

some, or all, of them, and that it would be something which they might not consciously choose to do. With the exception of one guest, they are all local, relatively small businesses, with the invited guest effectively being the public “face” of the business. The Commissioner accepts that their presence at something which is publicly perceived as having been a political fundraiser (even if that perception is incorrect) is something which could be misinterpreted as being an endorsement and which could, at a local level, have adverse repercussions for their businesses and cause personal reputational damage. Since the guests were not invited on the understanding that the dinner was a fundraiser (if, indeed, it was) the Commissioner considers the Council’s arguments in this regard carry considerable weight.

The legitimate public interest

51. Assessing fairness also involves balancing the data subjects’ rights and freedoms against the legitimate interest in disclosure to the public. Despite the reasonable expectations of data subjects, and the fact that damage or distress may result from disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in its disclosure.
52. The interest in disclosure must be a public interest, not the private interests of the individual requester. The requester’s interests are only relevant in so far as they reflect a wider public interest: the Commissioner must consider whether or not it is appropriate for the requested information to be released to the general public.
53. While the complainant did not point to any wider legitimate interest which would be served by the information being disclosed, the Commissioner accepts that legitimate interests will include the general public interest in transparency and accountability. Public confidence in the integrity of the Council will be enhanced by it routinely disclosing information about elected members and employees, particularly with regard to the spending of public money. The Council’s alleged overspend with regard to its policy on business dinners is of particular relevance when considering this point.
54. With regard to the invited guests, the Commissioner considers that there is also a similar legitimate interest in the Council being transparent about who accepts its hospitality, bearing in mind that this is underwritten by the public purse. In general, she considers that any loss of personal privacy experienced by the recipient will be more than compensated for by the networking opportunities and reputational enhancement of being seen at such events as the Council’s guest.

The Commissioner's decision

55. In reaching a decision in this case, the Commissioner is mindful of the context in which guests and Council staff believed they were attending the event, the public perception of the event since then and the likely consequences to the data subjects of disclosure. She has also taken into account her guidance with regard to balancing rights and freedoms with legitimate interests when dealing with a request for personal data about public authority employees, which states:

"Under the DPA, the exercise of balancing the rights and freedoms of the employees against the legitimate interest in disclosure is different to the public interest test that is required for the qualified exemptions listed in section 2(3) FOIA. In the public interest test, there is an assumption in favour of disclosure because the public authority must disclose the information unless the public interest in maintaining the exemption outweighs the public interest in disclosure. In the case of section 40(2) the interaction with the DPA means the assumption is reversed; a justification is needed for disclosure".

56. With regard to the names of the invited guests, having seen the invitation they received the Commissioner accepts that they would have had no reason to believe that it might be a political fundraising event. She is also satisfied that disclosure of their attendance at the dinner could have adverse consequences for them, in light of the widespread public perception that the event was a political fundraiser. The Commissioner is therefore satisfied that disclosing their names would be likely to cause unnecessary and unjustified damage and distress to the data subjects, their families and their business interests. She considers these consequences outweigh the legitimate interest in the disclosure of their names.

57. The Commissioner has therefore concluded that it would be unfair to disclose the names of the invited guests - in other words, that disclosure would breach the first data protection principle - and that the Council was entitled to rely on section 40(2) of the FOIA to withhold them.

58. With regard to the names of the Council employees, however, the Commissioner finds that their seniority, the fact that they occupy public facing roles and that they were formally representing the Council, makes the argument for disclosure of their names much stronger. While in hindsight the Council may have come to regret its decision to sponsor a table at the dinner, and it may be a source of some embarrassment to it, those reasons are not sufficient to outweigh the legitimate interest in transparency and accountability that would be served by disclosing the names of the employees who attended the event. The Council has not presented any evidence that the employees would suffer unwarranted damage or distress as a result of the disclosure, and therefore the

Commissioner has concluded that it would be fair to disclose their names - in other words, that disclosure would not breach the first data protection principle - and that the Council was not entitled to rely on section 40(2) of the FOIA to withhold them.

59. The Council should therefore take the action set out in paragraph 3 of this decision notice in respect of the Council employees' names.

Other matters

60. Although they do not form part of this decision notice, the Commissioner wishes to highlight the following matters of concern.

Internal review

61. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather, they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA.
62. Part VI of the section 45 Code of Practice states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint: so-called internal reviews. The Commissioner considers that internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases, which, as only three points of the request were contested, this was not.
63. The Commissioner is therefore concerned that it took the Council 52 working days to conduct an internal review in this case and that in doing so it failed to address the complainant's specific points about the employees who attended the dinner.
64. The Commissioner would remind the Council that she uses intelligence gathered from individual cases to inform her insight and compliance

function. This aligns with the goal in her draft "Openness by design"⁴ strategy to improve standards of accountability, openness and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity through targeting of systemic non-compliance, consistent with the approaches set out in her "Regulatory Action Policy"⁵.

⁴ <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

⁵ <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

Right of appeal

65. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

66. 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.

67. 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

**Samantha Bracegirdle
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**