

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 3 November 2021

**Public Authority:** South Tyneside Council  
**Address:** Town Hall And Civic Offices  
Westoe Road  
South Shields  
NE33 2RL

#### Decision (including any steps ordered)

---

1. The complainant has requested partially redacted copies of the P60s of several named councillors. South Tyneside Council (STC) confirmed that it held the information but said it was exempt from disclosure under section 40(2) (Personal information) of the FOIA.
2. The Commissioner's decision is that STC was entitled to rely on section 40(2) of the FOIA to refuse the request. However, she found procedural breaches of section 1(1)(a) (General right of access), section 10 (Time for compliance) and section 17 (Refusal of request).
3. The Commissioner requires no steps as a result of this decision.

#### Request and response

---

4. On 18 May 2020, the complainant wrote to STC and requested information in the following terms:

*"As requested previously could I please request a copy of the following Members P60s with personal details removed, other than names-*

[names of five councillors, redacted]"
5. STC responded on 23 July 2020. It stated that it could not disclose the requested information as it contained personal data.

6. The complainant requested an internal review of this decision on 23 July 2020, stating:

*"The only information that I required on the P60 was the councillors name and total amount paid section.*

*As you are aware, the previous years published allowances / expenses have not been correct and payments have not been recorded or published correctly.*

*As a I have stated previously the P60 is a legal document which will inform me exactly how much each given councillor has been paid by the Council ... this money is public money and the Council and Councillors should be open and transparent to the people who voted them in to public office."*

7. The complainant did not receive a formal response and so he made several further requests for the information. On 1 February 2021, STC confirmed that it was applying section 40(2) of the FOIA to refuse the request. It invited the complainant to complain to the ICO if he disagreed.

### **Scope of the case**

---

8. The complainant contacted the Commissioner on 17 January 2021 to complain about the way his request for information had been handled. The Commissioner asked him to provide further supporting information, which she received on 1 February 2021.
9. The complainant disagreed with STC's decision to withhold the requested information under section 40(2) of the FOIA. He believed it was in the public interest that he be able to scrutinise how much STC had paid individual councillors, as he had concerns about possible financial irregularities.
10. Although the initial request was for copies of the P60s *"with personal details removed, other than names"*, the complainant subsequently clarified that the only information he wished to receive from each P60 was the total amount paid to each councillor. The analysis below considers whether STC was entitled to apply section 40(2) of the FOIA to refuse to disclose that information. The Commissioner has also considered the procedural handling of the request.

## Reasons for decision

---

### Section 40 personal information

11. 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 one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
12. In this case the relevant condition is contained in section 40(3A)(a)<sup>1</sup>. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').
13. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of the FOIA cannot apply.
14. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

### ***Is the information personal data?***

15. Section 3(2) of the DPA defines personal data as:

*"any information relating to an identified or identifiable living individual"*.

16. The two main elements of personal data are that the information must *relate* to a living person and that the person must be *identifiable*.
17. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
18. An identifiable living individual is someone who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

---

<sup>1</sup> As amended by Schedule 19 Paragraph 58(3) DPA.

19. The complainant has clarified that his request is for the total payment made by STC to each named councillor, as shown on their P60s. A P60 is a statement issued to taxpayers at the end of a tax year as part of the proof that the appropriate tax and national insurance have been paid by an individual.
20. The Commissioner is satisfied that information about an individual's remuneration is undoubtedly information which relates to them.
21. The second part of the test is whether an individual can be identified from the withheld information. Since the request names the individual councillors whose payments the complainant wishes to scrutinise, and he has stipulated that their names should not be redacted, the Commissioner is satisfied that this is clearly information from which the individuals concerned can be identified.
22. The Commissioner is therefore satisfied that the withheld information both relates to, and identifies, the five councillors named in the request. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
23. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
24. The most relevant DP principle in this case is principle (a).

***Would disclosure contravene principle (a)?***

25. Article 5(1)(a) of the GDPR states that:

*"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".*

26. In the case of an FOIA request, the 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 lawful, fair and transparent.
27. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

**Lawful processing: Article 6(1)(f) of the GDPR**

28. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

*"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and*

*freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”<sup>2</sup>.*

29. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:-
- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
  - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
  - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
30. The Commissioner considers that the test of ‘necessity’ under stage (ii) must be met before the balancing test under stage (iii) is applied.

*Legitimate interests*

31. In considering any legitimate interest(s) in the disclosure of the requested information under the FOIA, the Commissioner recognises that a wide range of interests may be legitimate interests. They can be the requester’s own interests or the interests of third parties, and commercial interests as well as wider societal benefits. These interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case-specific interests. However, if the requester is pursuing a purely private concern unrelated to any broader

---

<sup>2</sup> Article 6(1) goes on to state that:-

*“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.*

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

*“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.*

public interest, unrestricted disclosure to the general public is unlikely to be proportionate. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

32. The complainant has offered the following reasons for requesting the information:

*"I have requested copies of certain Councillors P60 to confirm exactly how much they were paid by the Council.*

*Although the Council publishes payments to Councillors in compliance with the Members allowances Regulations, they have confirmed to me that previous years published figures were incorrect ... This Council has recently been rocked by a number of financial and bullying allegation scandals, resulting in the elected Leader of the Council resigning due to a Police investigation."*

33. He said the following to STC, when asking it to reconsider its decision to refuse his request:

*"As you are aware, the previous years published allowances/expenses have not been correct and payments have not been recorded or published correctly.*

*As a I have stated previously the P60 is a legal document which will inform me exactly how much each given councillor has been paid by the Council ... this money is public money and the Council and Councillors should be open and transparent to the people who voted them in to public office."*

34. There is an inherent interest in bodies which are funded by taxpayers being held accountable for the way they spend their money. Effective scrutiny helps secure the efficient delivery of public services and drives improvements within the authority itself. The Commissioner therefore accepts that there is a legitimate interest in transparency regarding the council's spending of public money on councillors' allowances.

*Is disclosure necessary?*

35. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
36. Disclosure under the FOIA is disclosure to the world at large. The Commissioner is only able to consider whether there is a legitimate interest in disclosure to the world at large rather than to any particular

individual. Therefore, when considering the question of necessity, the Commissioner must consider whether there is a pressing societal need for the disclosure of the information under the FOIA to serve the legitimate interests she has identified.

37. In this particular case, the Commissioner does not consider that disclosure of the withheld information under the FOIA is necessary to achieve the legitimate interests she has identified, for the following reasons.
38. STC has confirmed that it is not the expectation of any of the councillors that information from their P60s would be disclosed into the public domain. It said that they had been consulted regarding the request and had declined to give consent to such information being disclosed.
39. STC said that the Council is required by law to establish and maintain an allowance scheme and to publish details of the amounts paid to Elected Members. Councillors are entitled to a basic allowance, plus expenses, for council duties. Those who hold an office, such as chairman of a committee, may also receive extra allowances. The Council decides how much councillors may receive. It does this upon advice from an independent panel.
40. STC publishes details of all allowances and expenses paid to its Elected Members annually, and in accordance with the Local Government Transparency code<sup>3</sup>. This information has previously been provided to the complainant and it is publicly available. STC provided the Commissioner with a web link to the Record of Payments made in accordance with the Members Scheme of Allowances. The record for 2019/20 (the financial year covered by the request) contains the names of all councillors (including the five named in the request) and breaks down the payments made to each individual under seven headings:
  - Basic allowance
  - Special Responsibility Allowance
  - Travel Expenses
  - Subsistence expenses (including accommodation)
  - Dependants' carers allowance

---

3

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/408386/150227\\_PUBLICATION\\_Final\\_LGTC\\_2015.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/408386/150227_PUBLICATION_Final_LGTC_2015.pdf)

- Co-Optees allowance
  - Other (broadband/telephone)
41. The total amount paid to each councillor is then provided in an eighth column.
42. STC argued that this information satisfied the public interest in transparency regarding payments made by the Council to its councillors and that disclosure of information from the P60s was therefore not necessary and would be intrusive and against the wishes of the named councillors.
43. The Commissioner is satisfied that there are statutory requirements for STC to publish the information that the complainant has requested (ie the amounts paid to each councillor) and that it adheres to those requirements. The complainant's concern appears to be that he does not believe that the amounts stated on the Record of Payments are necessarily true and accurate and that the P60s might show different figures. He apparently believes this to have been the case for previous years and has alluded to 'investigations' taking place regarding those concerns.
44. The Commissioner is aware that there have been reports in the media that STC's finances are currently subject to a police investigation<sup>4</sup> and so the complainant's concerns are not necessarily unfounded (equally, during her investigation the Commissioner has seen nothing which substantiates them). Nevertheless, if the complainant has concerns about STC's financial declarations, there are formal channels through which he can raise them. STC is subject to an annual audit by external auditors. Allegations of financial irregularities may be reported to its external auditor, who can decide whether to investigate them. It is also to be expected that any police investigation into such matters would scrutinise the declarations made in respect of subsequent years' payments to councillors. The complainant is free to notify the police of his concerns if he believes they are not already a strand of any investigation being pursued.
45. The Commissioner is therefore satisfied that there are already proper, formal channel through which the concerns the complainant has expressed about STC's payments to councillors may be scrutinised by external parties. She considers this to be a route to achieving the complainant's stated aim (proper scrutiny and oversight of the council's payments to councillors) which is more discreet and considerate to the

---

<sup>4</sup> For example, <https://www.bbc.co.uk/news/uk-england-tyne-54990020>



privacy of the data subjects than disclosing information from their P60s, to the world at large, under the FOIA.

46. As the Commissioner has decided in this case that disclosure is not necessary to meet the legitimate interest in disclosure, she has not gone on to conduct the balancing test. As disclosure is not necessary, there is no lawful basis for this processing and it is unlawful. It therefore does not meet the requirements of principle (a).

### **The Commissioner's decision**

47. The Commissioner has therefore decided that STC was entitled to withhold the information under section 40(2), by way of section 40(3A)(a) of the FOIA.

### **Section 1 – general right of access** **Section 10 - time for compliance**

48. Section 1(1) of the FOIA states that an individual who asks for information is entitled to be informed whether the information is held and, if the information is held, to have that information communicated to them.
49. Section 10(1) of the FOIA states that on receipt of a request for information, a public authority should respond to the applicant within 20 working days.
50. The complainant submitted his request on 18 May 2020 and STC responded on 23 July 2020, refusing the request. STC therefore breached sections 1(1)(a) and 10(1) of the FOIA by failing to respond within the 20 working day time for compliance.
51. Furthermore, although its initial refusal referred to the information comprising personal data, STC did not specify the FOIA exemption it was relying on to withhold the information. That information was not provided until its response of 1 February 2021. This was a breach of section 17(1)(b) of the FOIA.
52. The Commissioner uses intelligence gathered from individual cases to inform the ICO's insight and compliance function. This aligns with the goal in our draft "Openness by design"<sup>5</sup> strategy to improve standards of accountability, openness, and transparency in a digital age. The Commissioner aims to increase the impact of FOIA enforcement activity

---

<sup>5</sup> <https://ico.org.uk/media/about-the-ico/consultations/2614120/foi-strategy-document.pdf>

through targeting of systemic non-compliance, consistent with the approaches set out in our "Regulatory Action Policy"<sup>6</sup> .

---

<sup>6</sup> <https://ico.org.uk/media/about-the-ico/documents/2259467/regulatory-action-policy.pdf>

## Right of appeal

---

53. 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: 0203 936 8963  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

54. 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.
55. 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**