

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 May 2022

Public Authority: Buckhurst Hill Parish Council
Address: 165 Queens Road
Buckhurst Hill
Essex
IG9 5AZ

Decision (including any steps ordered)

1. The complainant requested information from Buckhurst Hill Parish Council ("the Council") regarding the running of the Council's Facebook page and its associated administration and included a second request for council staff remuneration information including expenses and benefits, and a copy of an invoice for furniture expenditure.
2. The Council considered it was appropriate to provide an aggregated response. Whilst the Council disclosed some information, it refused the request for the specific remuneration information on the basis that the information was personal data under section 40(2).
3. The Commissioner's decision is that the Council was entitled to rely on section 40(2) of FOIA for part of the withheld information. However, the Council has breached section 10(1) of FOIA regarding the request, as it did not provide the complainant, within 20 working days, the information it held within the scope of the request. It also did not provide a valid refusal notice within the statutory timeframe and has therefore also breached section 17 of FOIA.
4. The Commissioner does not require the Council to take any further steps.

Request and response

5. On 11 October 2021, the complainant wrote to the Council and requested information in the following terms:

“On the 8th of September I made the following FOI request:
Who runs the Facebook page for the P.C.
How much are we paying for it
Why are residents banned from posting reviews on the Facebook page and why the only two reviews are from interested parties.
Despite the fact that over 20 working days have passed, I have neither received an acknowledgment nor a reply.

I would also like to know:
1) how many people are employed by the Parish Council either full time, part time or on casual bases?
2) please provide a summary of the salaries/wages each employee receives including expenses entitlement and other benefits related to the pay package.
3) Please provide a copy of the invoice detailing the purchase of chairs for Roding Valley Hall for approximately £5.000.”
6. On 17 November 2021, a response was sent via iPhone from Councillor Neville, who apologised for the delay and included some of the requested information and explained that disclosure of the specific financial details requested would breach the Data Protection Act. They went on to also explain that they would not supply the original invoice for chair purchase but gave an outline summary of the purchase.
7. After the Commissioners intervention during his investigation, on 23 December 2021, the Council wrote to the complainant in an official capacity to respond to their original complaint and subsequent follow-up of 11 October 2021. The Council did not offer an internal review.

Scope of the case

8. The complainant contacted the Commissioner on 11 November 2021 to complain about the way their request for information had been handled.
9. During the course of the Commissioner's investigation the Council withdraw its reliance on section 12 to withhold a copy of an invoice and provided this information to the complainant.

10. The Commissioner considers the scope of this case to be to determine if the Council is entitled to rely on section 40(2) of FOIA for the remaining withheld information.

Reasons for decision

Section 40 – personal information

11. Section 40(2) of 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)¹. 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 UK General Data Protection Regulation ('UK 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 FOIA cannot apply.
14. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he 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. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an

¹ As amended by Schedule 19 Paragraph 58(3) DPA.

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.

18. 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.
19. The information withheld under section 40(2) of FOIA is that of employees of the Council, specifically regarding their remuneration package and expenses.
20. In the circumstances of this case, having considered the information provided during his investigation, the Commissioner is satisfied that the information relates to the data subject(s). He is satisfied that this information both relates to and identifies the data subject(s) concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
21. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

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

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

23. 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.
24. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

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

25. Article 6(1) of the UK GDPR specifies the requirements for lawful processing by providing that "processing shall be lawful only if and to the extent that at least one of the" lawful bases for processing listed in the Article applies.

26. 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"².

27. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under 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.

28. 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

29. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a

² 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) of 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 UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK 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"

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 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.

30. In this case the requester has a personal interest in disclosure of the withheld information to ensure the Council is conforming with its obligations for openness and transparency, as well as accountability.
31. The complainant says that other Councils have provided this information when requested and as Buckhurst Hill Parish Council has refused to provide the requested information, it is causing them concern. The complainant included a link to another Councils published information; however, this was for salary bandings for job roles of a larger number of employees, and not the specific salary and benefits of individual employees requested in this case.
32. The Council has explained that there are seven employees, three full-time, three-part time and one temporary, and most of the positions are filled by single individuals, so the salary could be directly attributed to them and their income, and therefore considered to be the personal information of the employee.
33. The Council also explained that it considered if removing the names of the staff members would meet the request. However, as their names are already published on the staff structure, which is available on the Councils website, it would not prevent them from being identified.
34. The Council acknowledges that the legitimate interest is that of accountability, transparency, and openness, as well as an understanding of how decisions are made within the Council.
35. The Commissioner has taken in to account the wider legitimate interest in the disclosure of information about the Council's expenditure on staff resources. The disclosure of details about senior staff salaries and junior staff salary bandings, in the Commissioner's view, provide for further transparency.
36. The Commissioner accepts that there is a legitimate interest in the accountability of public authorities as a general principle. There is also the legitimate interest of the requester, the complainant.

Is disclosure necessary?

37. '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 FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
38. As stated in the Commissioner's guidance for requests for personal data about employees³, "there is a legitimate public interest in knowing how public money is apportioned across an organisation, which includes salaries at lower levels. Therefore, for more junior staff, you might disclose the advertised salary range for these posts in bands of £5000."
39. It also states, "...when considering the legitimate interests test for salary information which is not routinely published, you should consider how much significant information you are disclosing about an individual's personal financial circumstances..."
40. The Council has confirmed that details of employee remuneration are not currently in the public domain, only the overall expenditure, and that it does not have a statutory obligation to publish individual employees information, under the level of senior staff. However, it has agreed to publish salary bandings going forward. As far as the Commissioner is aware, there is no alternative way of establishing individual employee remuneration.
41. The Commissioner is therefore satisfied there are no less intrusive means of achieving the legitimate aims identified than to disclose the information requested.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

42. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the FOIA in response

³ [Requests for personal data about public authority employees \(ico.org.uk\)](https://ico.org.uk)

to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.

43. In considering this balancing test, the Commissioner has taken into account the following factors:
- the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
44. In the Commissioner's view, a key issue is whether the individual(s) concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
45. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
46. The Council has advised that the combined staff salaries are published in their financial statements and that this information is published on the Council website, in addition, they have stated that going forward, they will also publish salary bandings for those staff below senior level.
47. Based on the wording of this request, which seeks information about individual employees remuneration, rather than salary bandings, the Commissioner considers that the request is seeking personal information, and due to the small size of the Council, by releasing this information, along with the information that is already within the public domain, it would likely disclose the financial circumstances of some individuals.
48. The Commissioner considers that disclosure under FOIA is disclosure to the world at large and not just to the requester. It is the equivalent to the Council publishing the information on its website.
49. The Commissioner does not consider that disclosure of the specific withheld information, would further public debate or contribute towards the accountability of the Council other than confirming specific individuals remuneration in full.

50. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subject's fundamental rights and freedoms in this case.
51. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.
52. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he does not need to go on to consider whether disclosure would be fair or transparent.
53. The Commissioner has therefore decided that the Council was entitled to withhold the information under section 40(2), by way of section 40(3A)(a).

Section 10(1) and Section 17 – time for compliance

54. Section 1(1) of FOIA states that: "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."
55. Section 10(1) of FOIA states that a public authority must respond to a request promptly and "not later than the twentieth working day following the date of the receipt".
56. Section 17(1) of FOIA states that: "A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which –
 - (a) states that fact,
 - (b) specifies the exemption in question, and
 - (c) states (if that would not otherwise be apparent) why the exemption applies."
57. The council provided the revised response following the commencement of the Commissioner's investigation, which was more than 3 months after the initial request was made.

58. Therefore, the Commissioner's decision is that the Council did not comply with the requirements of section 10(1) and section 17 of FOIA.

Other matters

59. The complainant raised several concerns in their correspondence to the Commissioner. However, the Commissioner can only investigate matters within his remit under FOIA. Where appropriate, the Commissioner has advised the complainant of next steps regarding their data protection concerns. While the Commissioner acknowledges the complainant's other concerns, these are considered to be outside the Commissioner's remit and therefore he is unable to offer any guidance on those matters.
60. The Commissioner considers that the request was poorly handled by the Council. It failed to respond appropriately to the request or specifically cite relevant exemptions it relied upon to refuse the request, and did not offer an internal review, which may have given them the opportunity to rectify their failings. The Council needs to take steps to improve both its request, internal review, and response handling procedures in this respect.
61. The Commissioner faced significant difficulty in investigating this matter due to delays in responses from the council. The Commissioner would encourage the Council to engage with the Commissioner at an earlier stage of the investigation.

Right of appeal

62. 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

63. 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.
64. 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

**Phillip Angell
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