

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 October 2022

Public Authority: Bodmin Town Council

Address: Shire Hall
Mount Folly
Bodmin
PL31 2DQ

Decision (including any steps ordered)

1. The complainant has made three requests to Bodmin Town Council (the town council). These all relate to the departure of certain employees from the town council, and the costs relating to this.
2. The town council provided the complainant with some information in response to all three of the requests; it has also recently provided some additional information within a revised and final response sent to the Commissioner, which it confirmed was also to be issued to the complainant.
3. The Commissioner has decided that the town council has incorrectly cited section 21 - information accessible by other means, of the FOIA to part of Request 1. However, he has proactively applied section 40(2) - third party personal data of the FOIA, to this information, as he is satisfied that its disclosure would breach data protection law.
4. The Commissioner is satisfied that, on the balance of probabilities, the town council has released all the remaining information that it holds that is relevant to Request 1.
5. With regard to Request 2, it is the Commissioner's decision that the town council is entitled to withhold some of the information under section 40(2) of the FOIA, and that, on the balance of probabilities, it has released all of the remaining information held that is relevant to this request.

6. With regard to Request 3, the Commissioner is satisfied that section 21 of the FOIA – information accessible by other means, is applicable to some of the requested information. He has also decided that the town council is entitled to rely on section 40(2) of the FOIA, in respect of all of the information that it has withheld in response to this request.
7. The Commissioner does not require the town council to take any steps as a result of this decision notice.

Request and response

8. On 21 February 2021, the complainant submitted the following request (Request 1) to the town council:

“I know that two senior staff went absent in January 2020. I know you were paying their full salaries until at least September 2020.

One of your councillors has told me they have both left the organisation. One sacked and the other resigning before being sacked.

Please tell me the cost of this to Bodmin Town Council. This should include salary, on costs and settlements with staff. Also including the cost of any advice you may have received in connection with this.

Are there any potential further costs to the council? eg employment tribunals or pay offs still being negotiated or the cost of any advice.

Was the departure of these staff for the reasons outlined in a report to Council in 2019. Notably a lack of respect from senior councillors?”

9. The town council provided the complainant with some information in response to Request 1. This included confirmation that the total costs that had been requested were £86,932.04.

10. On 7 October 2021, the complainant then submitted the following request (Request 2):

“You have told me that the cost of the [officer 1 redacted] and [officer 2 redacted] leaving the council came to £86,000. I have since discovered a third senior officer has left the council. Can

you confirm that the £86,000 related to the departures of two staff as I requested?

Did the £86,000 apply at the time of my question or the time of your answer?

I would now like to know the full and final cost the council has spent on the departure of these three staff. Are there any parts of this cost that you have chosen not to reveal. If so what are they?"

11. The complainant also made the following request (Request 3) on 7 October 2021. It appears to be a follow on from Request 2:

"As I understand it concerns about the performance of the [officer 1 redacted] and [officer 2 redacted] came to a head in January 2020. The council convened a staffing panel to consider the matter and employed a consultant to investigate. The councillors on the panel were [name redacted], [name redacted], [name redacted], [name redacted], [name redacted] and [name redacted]. Is that correct? The investigator concluded that there was a case to answer against both employees. Is that correct? The investigator did not recommend the employees be dismissed. Is that correct? The panel arranged for the case go to a disciplinary hearing and also voted to dismiss the employees by a majority of four to one. Is that correct? I assume so because that's what your minutes of the council meeting on 2 August 2020 imply. Was independent professional advice available at this meeting? The minutes state a disciplinary hearing was scheduled for the following Tuesday? Did the hearing take place on that day? How long in advance of that meeting were employees informed of the case(s) they had to answer?

I assume there were then disciplinary hearings, appeals and grievance hearings. Is that correct? If so did any members of the staffing panel decide on the outcome of any of these hearings? If so who and at which hearings? Who presented the council's case at these hearings? Was independent professional HR advice made available to panellists at these hearings? If so, who provided the advice? Did any of these hearings proceed in the absence of either an employee's witness or representative? If so please give details.

The council has sourced advice from a number of external organisations. In this matter the council has engaged:

Cornwall Association of Local Councils
South West Councils
Cornwall Council
Ellis Whittam
Kensa CIMS

Please can you confirm this. Please can you identify any other external advice the council has sourced for this. For each source please identify the period of during which they acted for the council. Please identify the reason why the council stopped using that source. In each case except CALC and South West Councils was there an open competition to decide who took on the role and how many providers were considered? How much has the council spent on external advice in this regard?

In the summer of 2020 the [officer 1 redacted] sent an e mail to the two employees. It contained these words: "I am giving you three working days to withdraw your accusations and apologise, if you do not I shall commence legal proceedings against you for slander /defamation of character. In addition, I am reporting you to the Police and my employer for bullying and harassment, your behaviour is not tolerated and if you persist I shall proceed to take out a legal injunction against you to prevent further attempted damage to my reputation.

I do not accept or tolerate bullying and harassment of any kind, your behaviour is unacceptable and I find your emails offensive and humiliating. You have been warned."

This was sent from a council e mail address. Is that correct? If so was it approved by any councillors before it was sent? If so who?

The [officer 1 redacted] sent a similar email to councillors at about the same time. Was this e mail discussed at any council meetings? If so when? Did the council take action as a result of this e mail? If so what? Was this reported to the police? Did the council consider pursuing the option of a public enquiry? Who on behalf of the council was providing occupational health support to the two employees, then absent from work, before and after these emails?

A number of other long serving staff left the council If we define long serving as more than three years, how many left between October 2019 and May 2021? Some of these apparently complained to councillors about the [officer 1 redacted] What is the procedure for a complaint about your [redacted]? Then and now. Are there records kept when councillors receive such

complaints? If not why not? If so which councillors were approached?"

12. Whilst the town council provided the complainant with some information in response to Request 2 and Request 3, it advised certain information was to be withheld, citing a number of exemptions as its basis for doing so.
13. Following the Commissioner's intervention, the town council conducted a review, and has now set out a revised position in relation to all three requests.
14. The town council has confirmed that the figure it has released relating to the departure of the two members of staff is accurate, and that there are no additional costs to be added to this amount.
15. The town council states that it believes that it has released all the information held that is relevant to Request 1, with the exception of that which it states is subject to section 21 of the FOIA (it has referred to information published on its website).
16. The town council has also provided some additional information in response to Request 2, and has advised that it holds no further information relevant to this request.
17. With regard to Request 3, the town council has provided some additional information to the complainant within its revised response. It has cited section 21 in response to part of the request, and provided the complainant with links to information available on its website. It has then gone on to advise that it believes the remaining information should be withheld, citing section 36(2), section 43(2), and section 40(2) of the FOIA.

Scope of the case

18. The complainant has raised concerns about the town council's handling of all three of their requests.
19. The complainant did not accept that the town council had identified all the information that is relevant to certain parts of their requests. They were also concerned that the town council had withheld some information in response to their requests.
20. The Commissioner will decide whether the town council is correct to cite section 21 in response to part of the Request 1 and also whether, on the balance of probabilities, the town council has now provided the

complainant with all the remaining information held that is relevant to this request.

21. The Commissioner will also decide whether the town council has released all the information held relevant to Request 2.
22. Finally, the Commissioner will go on to consider whether the town council is correct to rely on section 21, section 40(2), section 43(2), and section 36(2) as its basis for refusing to release some of the information that is relevant to Request 3.

Reasons for decision

Request 1

23. Section 21 of the FOIA provides an exemption where the requested information is reasonably accessible by other means.
24. The town council has cited section 21, and provided a link to information on its website, in response to that part of Request 1 where the complainant asked for:

"Was the departure of these staff for the reasons outlined in a report to Council in 2019. Notably a lack of respect from senior councillors?"
25. The Commissioner is not persuaded that the information on the town council's website provides the specific details requested by the complainant. He has therefore decided that the town council is not entitled to rely on section 21 of the FOIA in respect of this part of Request 1.
26. However, the Commissioner is mindful that section 40(2) of the FOIA provides an exemption for information that 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. He would not order disclosure of information in circumstances where to do so would breach data protection laws.
27. Section 3(2) of the Data Protection Act 2018 defines personal data as:

"any information relating to an identified or identifiable living individual."
28. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

29. The Commissioner is satisfied that the information set out in paragraph 24 of this decision notice is the personal data of third parties. They can be identified from this information, and it is directly about them and the reasons for action which has, or has not, been taken against them by the town council.
30. The Commissioner is of the opinion that the relevant individuals would not have any reasonable expectation that this personal information would be made available to the public.
31. The Commissioner accepts that there is some public interest in openness and transparency, and that it is important to have some reassurance that the council is taking appropriate action where necessary in relation to matters of potential misconduct by members of staff.
32. However, the Commissioner is aware that there is some information in the public domain about matters that relate to Request 1, and that this goes some way in meeting the public interest.
33. Having considered all the information available, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms in this case.
34. The Commissioner therefore considers that disclosing the remaining withheld information relevant to Request 1 would contravene a data protection principle: that which is set out under Article 5(1)(a) of the UK General Data Protection Regulation.
35. Given the above, whilst the Commissioner is not persuaded that the town council was correct to apply section 21 to part of Request 1, he has pro actively applied section 40(2) to the relevant information, as he is satisfied that its disclosure would breach data protection laws.
36. The Commissioner will now go on to consider whether the town council has, on the balance of probabilities, provided the complainant with all the remaining information held that is relevant to Request 1.
37. The town council has confirmed that it has checked with the accounting team, and it has verified that the figure of £86,932 given to the complainant for the total costs relevant to Request 1 is correct, and that it takes into account all the information which is held. It has also confirmed that the cost figure released relates solely to the two individuals referred to in Request 1.
38. The Commissioner has found no evidence to indicate that the council's calculations are not correct, or that it has failed to take into account all the relevant costs that are held.

39. The Commissioner therefore concludes that the town council has, on the balance of probabilities, provided all the information relevant to Request 1, with the exception of that which he has found to be subject to section 40(2) of the FOIA.

Request 2

40. Whilst the town council provided some information in response to Request 2, it has advised the Commissioner that as a number of officers have left the council's employment, the identity of the third officer referred to in this request had been unclear. It had therefore been unable to consider this part of the request.

41. However, the town council has said that as it is now aware of the identity of the third officer, it is willing to provide the complainant with an answer to their questions about this person; this information is included in the town council's revised response, which it has confirmed was to be issued to the complainant.

42. Having considered all the information available, the Commissioner is satisfied that, on the balance of probabilities, the town council has provided all the information held relevant to Request 2.

Request 3

43. The town council has provided the complainant with some information in response to Request 3.

44. The council has cited section 21 of the FOIA, in response to parts of the request, and has referred the complainant to information published on its website.

45. The Commissioner is satisfied that the town council is entitled to rely on section 21 of the FOIA in response to part of Request 3.

46. The council has also relied on section 40(2) as its basis for withholding some information in response to part of Request 3.

47. The Commissioner is satisfied that all the withheld information relevant to Request 3 is the personal data of third parties. This is because they can be identified from the information, it directly relates to them, or processes that took place which relate to them, and also the actions that have been taken that have had a direct impact on them.

48. The Commissioner is also satisfied that the third parties would not have expected that this information about them would be released into the public domain.

49. It is the Commissioner's opinion that, should any of the information that has been withheld in response to Request 3 be released, this would reveal something about the process that was followed in relation to each of the relevant individuals, and action which was, or was not taken. It is the Commissioner's opinion that this would cause those individuals harm and distress.
50. As was the case with Request 1, the Commissioner accepts that there is some public interest in openness and transparency, and that it is important to have some reassurance that the council is taking appropriate action where necessary in relation to potential misconduct.
51. However, the Commissioner is aware that there is some information available about the matters to which this request relates already in the public domain. He does not consider it necessary to meet the public interest of openness and transparency by disclosing the detailed information which has been requested in this instance. He has therefore determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms.
52. The Commissioner considers that disclosing the remaining withheld information relevant to Request 3 would contravene the data protection principle set out under Article 5(1)(a) of the UK General Data Protection Regulation.
53. As the Commissioner is satisfied that the council is entitled to rely on section 40(2) of the FOIA in respect of all the information that has been withheld in response to Request 3, he does not consider it necessary to go on to consider the council's application of section 36(2) or section 43(2) of the FOIA.

Further matters

54. As part of its response to the Commissioner's investigation, the town council included a copy of a revised and final response to the requests. It confirmed that it was also to provide this to the complainant.
55. However, the complainant has advised that they have not received any recent communication from the town council. The Commissioner would therefore request that the town council takes adequate steps to ensure that its revised response is now received by the complainant.

Right of appeal

56. 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

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

57. 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.
58. 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

Suzanne McKay
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF