

The Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 November 2022

Public Authority: South Somerset District Council
The Council Offices
Brympton Way
Yeovil
Somerset
BA20 2HT

Decision

1. The requester seeks, from South Somerset District Council (the Council), information relating to any interests registered by certain 'key officers' in specified years.
2. The Commissioner's decision is that the Council was correct to cite section 40 of FOIA (the exemption for personal information) in response; however the Council breached sections 10 and 17 of FOIA because it failed to provide an appropriate response within the statutory time for compliance.
3. The Commissioner does not require any steps to be taken following this decision notice.

Request and response

4. The complainant made the following information request to the Council in a document dated 5 September 2021 but apparently sent to/received by the Council on 10 September 2021:

"Key Officers Register of Interests', from financial year end 2015, 2016, 2017 and 2018 for the following personnel:

[three named individuals]

'Key Officers Register of Interests', from financial year end 2017, 2018, 2019, 2020 and 2021 for the following personnel:

[seven named individuals]

Members Register of Interests received from year end 2014, 2015, 2016, 2017, 2018 for:

[three named individuals]

Any management and staff returns relating to Code of Conduct, Official Conduct, Other Interests and Activities; any registered conflicts of interest or benefits and gifts recorded, received from year end 2018, 2019, 2020 and 2021 for:

[14 named individuals]".

5. On 15 October 2021 the Council responded. It provided information within scope of the third part of the request ("Members Register of Interests ..."); and for the fourth part ("Any management and staff returns ...") the Council said "A search of the Council's Gifts and Hospitality Register has not revealed any information in respect of the named employees". For the first and second parts of the request ("Key Officers Register of Interests ...") the Council said the information is held but that:

"the information constitutes personal data ... disclosing it would breach ... section 40(3A) ... the Council will need to carry out a balancing act ... to determine whether or not it is in the public interest to disclose this information and, if so, what it is reasonable to release ...".

6. The Council then told the complainant that it was seeking the views of the named individuals and would contact the complainant further in due course.
7. However, the complainant told the Commissioner that no further response was received from the Council; and the Council's submissions

to the Commissioner indicate that the response of 15 October 2021 was the only response to the request.

8. The Council has stated its final position to the Commissioner, in respect of the "Key Officers Register of Interests ..." – it considers that the information is exempt under section 40(2) of FOIA as disclosure would contravene Article 5(1)(a) of the UK General Data Protection Regulation (UK GDPR).

Scope of the case

9. On 20 January 2022 the complainant contacted the Commissioner to complain "in relation to this unanswered request". This reasoning covers only the first two parts of the complainant's request ("Key Officers Register of Interests ..."). The complainant has confirmed to the Commissioner that those two parts are the focus of the complaint.
10. The Commissioner has not seen a copy of the withheld information but he considers that he is able to make the present decision without seeing it, given the wording of the request itself and the Council's submissions.

Reasons for decision

Section 40

11. Section 40(2) of FOIA, with section 40(3A), provides that information is exempt information if it is the personal data of any other individual(s) and disclosure would contravene any of the data protection principles.
12. Personal data is information that relates to an identified or identifiable individual ('data subject').
13. In this instance the request was for the registered interests of named individuals. The complainant said to the Council "I do not require their personal data. I only wish to know if they registered any hospitality, gifts or payments in kind or cash ...". From this comment it is clear to the Commissioner that the complainant believed that such information would not be personal data. However, the Commissioner considers that such information will be personal data because it identifies those individuals by name and relates to/is about them (being **their** registered interests).
14. In his initial correspondence with the complainant, the Commissioner explained that information about whether ten particular individuals registered certain benefits/interests will be the personal data of those

individuals. In response, the complainant informed the Commissioner that they suspected no interests were registered. However the Commissioner highlights to the complainant that even stating no interests were registered by one or other of the named individuals would itself be information amounting to the personal data of those individuals.

15. Article 5(1)(a) of the UK GDPR states that personal data shall be "processed lawfully ... in relation to the data subject".
16. To determine whether disclosure of personal data in response to an information request under FOIA is lawful, a public authority should consider whether there is a lawful basis for processing in Article 6(1) of the UK GDPR.
17. The Commissioner considers that the lawful basis most likely to be relevant in relation to a request for information under FOIA is Article 6(1)(f), 'legitimate interests'. In applying Article 6(1)(f), it is necessary to consider the following three-part test:
 - i) Legitimate interest test: whether there is a legitimate interest in the disclosure of the information;
 - ii) Necessity test: whether disclosure of the information is necessary to meet the legitimate interest in question;
 - iii) Balancing test: whether the legitimate interest overrides the interests, fundamental rights and freedoms of the data subject(s).

Complainant's position

18. The complainant told the Commissioner that the information in question is needed in connection with an employment matter/Employment Tribunal proceedings. The complainant wants to know "how staff in general have interpreted the Council's Code of Conduct and registered interests of benefits received".

Council's position

19. In its submissions to the Commissioner, the Council argued that the requested information is exempt under section 40(2). It explained that while any registered interests of elected members are published, other officers have an expectation of privacy when declaring any interests; and that although the Council sought the views of the named individuals where possible, most were opposed to disclosure because the information relates to their private life rather than their work life.
20. As a result, the Council said, disclosure would contravene Article 5(1)(a) of the UK GDPR.

The Commissioner's position

21. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes as well as case specific interests.
22. In this instance, the Commissioner considers that the legitimate interest test (the first part of the three-part test) is met. Disclosure of information about the registering of interests by Council staff will demonstrate accountability and transparency on the part of the Council; in addition the complainant has expressed a private interest around obtaining the information in connection with an employment matter.
23. The next step is to consider whether disclosure under FOIA is necessary to achieve the legitimate interests identified. The necessity test therefore involves judging whether there are alternative ways to meet the identified legitimate interests. In this instance, the Commissioner considers that the only way to meet them is to disclose personal data.
24. However, the Commissioner considers that in the final balancing test, the fundamental rights and freedoms of the data subject(s) will override the legitimate interests. In particular, the Commissioner notes that the Council has indicated that the individual officers in question are not elected members; that they declare/register their interests with an expectation of privacy; that the Council received concerns from them about a disclosure under FOIA; and that the information relates to their private lives rather than work lives.
25. Therefore, the Commissioner considers that there is no lawful basis for disclosure of the personal data – its disclosure would contravene Article 5(1)(a) of the UK GDPR.

Time for compliance/refusal of request

26. 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.”

27. 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 receipt".
28. 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 ... 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."
29. In this instance, the twentieth working day following the date of receipt of the request was 8 October 2021. In its submissions to the Commissioner, the Council acknowledged that its response of 15 October 2021 was sent five days after the end of the statutory time for compliance.
30. The Commissioner therefore finds that the Council has breached sections 10(1) and 17(1) of FOIA because it did not, within 20 working days of receiving the request, confirm whether the information was held and disclose it (in respect of the disclosable information) and issue a refusal notice stating that the information is exempt and why (in respect of the exempt information).

Other matters

31. The Commissioner has further comments for the complainant and, in particular, the Council – whose handling of this matter is disappointing.

Complainant

32. In the initial complaint, the complainant explained that the information that was requested under FOIA was being sought in connection with an employment matter/legal proceedings, including a registered Employment Tribunal claim, and that the requested information was relevant to those proceedings. The Commissioner explained to the complainant that disclosure under FOIA is 'to the world', not just the complainant, and suggested that it may be more appropriate in this

instance to seek the information in question through the tribunal proceedings and any related discovery process rather than under FOIA.

33. The Commissioner's FOIA [guidance](#) notes that requesters may not get information they need for legal purposes because it may not be suitable for the general public to see.

Council

34. The Council has acknowledged some administrative errors and said they were caused by the number and complexity of requests it has received from the complainant. The Council also made reference to an ongoing legal dispute with the complainant which it said made the FOIA requests more complex. However, the Commissioner is disappointed with the Council's handling of this request and complaint, for the reasons below.
35. Although the Council's response of 15 October 2021 did state that the information held within scope of the first two parts of the request was personal data and that its disclosure "would breach ... section 40(3A)", it also said that "the Council will need to carry out a balancing act ... to determine whether or not it is in the public interest to disclose this information" and that the Council would contact the complainant after seeking the views of the data subject(s) – however the Council did not contact the complainant further in respect of this particular request, and the complainant went on to refer a complaint to the Commissioner about an "unanswered" request.
36. The Commissioner even highlighted the Council on 22 March 2022 that a further response to the complainant was outstanding, and the Council responded to say that it would contact the complainant (but it did not).
37. The Council told the Commissioner that for members of staff at junior levels, some of the requested information "is not collected and so is therefore not collected". Presumably what the Council meant was 'not collected and therefore not held'. The Council does not seem to have communicated this to the complainant – instead the Council cited section 40(2), thereby suggesting to the complainant that information is held in respect of all ten of the named individuals but is being withheld.
38. The Commissioner asked the Council for a copy of any information being withheld, however the Council did not provide one. Instead, the Council provided information that indicated the categories of information collected from 'key officers' about their interests and said that individual records could be supplied in full if required. This information had already been requested. Rather than request it again, the Commissioner made a decision without it.

Right of appeal

39. 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

40. 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.
41. 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

Daniel Kennedy
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