

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 February 2023

Public Authority: Oxford City Council
Address: Town Hall
St Aldate's
Oxford
OX1 1BX

Decision

1. The complainant requested information from Oxford City Council (the Council) relating to details of the redundancy package paid to the former Director of Construction at Oxford Direct Services.
2. The Commissioner's decision is that the Council is entitled to rely on section 40(2) (personal information) of FOIA to refuse to provide the requested information.
3. The Commissioner does not require the Council to take any steps.

Request and response

4. The complainant made the following information request to the Council on 8 May 2022:

"Please provide details of redundancy package paid to former Director of Construction (Jan 2018 to April 2021) at Oxford Direct Services." (sic)
5. The Council responded on 19 May 2022 and refused to provide the requested information citing section 40(2) (personal information) of FOIA as its basis for doing so.
6. On 19 May 2022, the complainant requested an internal review.

7. The Council upheld the use of section 40(2) of FOIA in their internal review, dated 28 October 2022.

Reasons for decision

8. This reasoning covers whether the Council is entitled to rely on section 40(2) of the FOIA to refuse to provide the requested information.
9. Section 40(2) 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.
10. Section 3(2) of the Data Protection Act 2018 defines personal data as:
"any information relating to an identified or identifiable living individual."
11. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
12. The complainant has requested information relating to details of a redundancy package paid to the former Director of Construction at Oxford Direct Services. The Commissioner is satisfied that the requested information both relates to and would identify the former Director of Construction. He therefore considers that the requested information falls within the definition of 'personal data' in section 3(2) of the DPA.
13. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focused here on principle (a), which states:
"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
14. In the case of a 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.
15. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.
16. The Commissioner considers that in this case, the complainant is pursuing a legitimate interest as the request relates to a senior public

post, and that disclosure of the requested information is necessary to meet that legitimate interest. However, the Commissioner considers that the former Director of Construction has a strong and reasonable expectation that information detailing any redundancy payments they received would remain confidential to them and their employer.

17. The Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the former Director of Construction. Therefore, he considers that there is no legal basis for the Council to disclose the requested information and to do so would be in breach of principle (a).
18. The Commissioner's decision is that the Council is entitled to rely on section 40(2) of the FOIA to refuse to provide the requested information. The Commissioner requires no further action to be taken by the Council in relation to this request.

Other matters

19. The Commissioner cannot consider in a decision notice the amount of time it took a public authority to complete an internal review because such matters are not a formal requirement of FOIA. However, it is good practice to offer an internal review, and, where a public authority chooses to do so, the code of practice established under section 45 of FOIA sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales.
20. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 working days in exceptional circumstances. As the Council failed to provide a substantive review within 40 working days of one being requested, the Commissioner considers that the Council failed to act in accordance with the section 45 code of practice.
21. These concerns will be logged and used by the Commissioner when considering the overall compliance of the Council.

Right of appeal

22. 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

23. 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.
24. 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

Michael Lea
Team Manager
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Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF