

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 7 June 2011

Public Authority: Bolton Metropolitan Borough Council
Address: Town Hall
Civic Centre
Bolton
Lancashire
BL1 1RU

Summary

The complainant requested a copy of senior council officers' declaration of interests. He also requested a copy of members' declaration of interests. The Council provided the declaration of interest for Members with some redactions however it refused to provide the Senior Officers' declaration of interests stating that that was exempt under section 40(2) of the Act (personal data).

The Commissioner's decision is that some of the information is exempt from disclosure under section 40(2) of the Act; however other sections are not and should be therefore be disclosed.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 13 October 2010 the complainant asked the authority for:

"Please supply copies of all declarations of interests for all current Bolton councillors.

Please supply copies of any similar declarations held by the council for all/any senior council Officers."

3. As the Council did not initially respond within the 20 working day deadline set by the Act, (which would have been 10 November 2010) the complainant made an initial complaint to the Commissioner on 11 November 2010.
4. On 12 November 2010 the Council provided the complainant with a copy of its declaration of interests for Members. As regards the declaration of interest for Officers it stated that it would need to extend the time limit for a decision to be made in order to further consider the public interest test in detail. The refusal notice notified the complainant of this following the Council's duty under section 17(2) of the Act.
5. The Council then responded on the 3 December 2010. It stated that the information was exempt under section 40(2) of the Act.
6. On 11 December 2010 the complainant asked the Commissioner to review the Council's response.

The Investigation

Scope of the case

7. On 11 November 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to whether the information he requested should have been disclosed to him.
8. The Council provided the complainant with a copy of the member's declaration of interests, and the complainant did not raise this as an issue with the Commissioner. Accordingly the Commissioner has limited this Decision Notice to consideration of the request for the declaration of interests for Officers.
9. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

10. The Commissioner wrote to the Council on 15 December 2010 stating that a valid complaint had been received.
11. On 14 January 2011 the Council wrote to the Commissioner and asked him to reconsider his decision that the complaint was valid as it had not been given the opportunity to review its decision.
12. On 21 January 2011 the Commissioner, by telephone and in writing, told the Council that it should take the complainant's complaint to the Commissioner to be an expression of his wish for the decision to be reviewed, and to review its decision and provide a response to both the complainant and to him by 18 February 2011.
13. On 1 February 2011 the Council wrote to the Commissioner and asked him to provide a copy of the complainant's complaint to the Commissioner in order to carry out its review.
14. On 4 February 2011 the Commissioner wrote to the Council indicating that the complainant's request was for the Council's entire response to be reviewed.
15. On 15 February 2011 the Council wrote to the complainant asking him to provide any comments or arguments he wished it to take into consideration in its review within 7 days. It provided a copy of that letter to the Commissioner on 17 February 2011.
16. On 18 February 2011 the Commissioner wrote to the Council stating that he had asked for the review to be carried out by 18 February 2011 and was not satisfied with the Council's response. He asked the Council to provide the withheld information and its decision by 25 February 2011.
17. The Council responded on 25 February 2011 providing the withheld information. It followed this with an email on 1 March 2011 providing further arguments in support of its position.

Analysis

Substantive Procedural Matters

18. The complainant made his request for information on 14 October 2010, however the Council did not respond to that request until 12 November 2010. This falls outside of the 20 working day deadline set for response

by section 17(1) of the Act. The Commissioner notes that a time extension under section 17(2) is only permitted when an exemption subject to the public interest test is claimed; section 40 is an absolute exemption, though the Commissioner acknowledges it does often require public interest considerations to be made.

19. Accordingly the Commissioner's decision is that the Council breached section 17(1) of the Act.

Exemptions

20. The Council stated that the information was exempt because it is the personal data relating to the Officers concerned.
21. Section 40(2) provides an exemption to disclosure where the information is the personal data of a third party and a disclosure of that information would breach one of the data protection principles of the DPA.

Is the information personal data?

22. The complainant made a number of requests seeking the declaration of interests of Senior Officers at the Council. Section 1 of the DPA defines personal data as data which relate to a living individual who can be identified:
 - from those data, or
 - from those data and other information which is in the possession of, or is likely to come into the possession of the data controller.
23. The information in question identifies the individual officer at the Council, and then provides a list of interests they have declared which could feasibly conflict with their role within the Council. These interests include such items as family associations and land owned. The list is provided to the Council in order that the Monitoring Officer is aware of any conflicting interests which might arise during the course of the officer's duties, particularly where that officer is involved in decision making.
24. The Commissioner is therefore satisfied that as a list of the individuals private interests, including associations, family relationships and Membership of organisations the information is personal data relating to them.

25. The Commissioner is therefore satisfied that the information is personal data relating to the officers concerned and other third parties.

The data protection principles

26. Section 40(2) excludes the personal data of third parties from disclosure if disclosing it would breach one of the data protection principles of the DPA.
27. The first data protection principle requires that personal information should be processed "fairly". In order for a disclosure of this information to be fair, an important factor to consider is whether Senior Officers had a reasonable expectation that their information may be disclosed by their employer to any member of the public at the time that they first provided it to the Council. This might be because the Council told them that that would occur or because it would have been reasonable for them to understand this was a possibility at the time that they provided it. Alternatively another reason might apply which would make that disclosure fair.

Would that level of disclosure lies within the officer's expectations?

28. The Council has provided information on how the declaration of interests are obtained from Senior Officers. It explained that the declarations are provided voluntarily. This is different to Members, who are required by law to provide information and complete a declaration of interests form. It also provided a link to the Council constitution which states:

"7.3 All employees on Salary Band 8 and above along with certain other posts where Directors deem appropriate must complete the form attached at Appendix B Part B of the Council's Codes and Protocols for Members and Officers or located on the Council's Intranet. If they have any personal interests or involvement which might conflict with their employment or with the interests of the Council. Such employees should complete the form if, for example, they live within the Borough and own their own home.

7.4 The Monitoring Officer will maintain a register of declared interests. The register will be accessible only to the Monitoring Officer and other authorised Officers for the purposes of ensuring that proper standards of conduct are maintained (and/or in accordance with paragraph 14.2 below). Individual employees will only have access to information recorded in respect of themselves, if requested.

7.5 The register will be reviewed annually, however, if an employee's circumstances change in the meantime he/she can make a

voluntary declaration using the proforma attached at Appendix 'B'.

- 7.6 *If any employee has a personal interest in any matter which arises at any meeting where the employee is reporting or advising (or might be called upon to advise, or otherwise be able to influence) any member(s) of the Council, or any third party, the employee must declare the interest, and take no part in the consideration or determination of the matter. Any such declaration made at an official meeting will be recorded in the minutes. If appropriate, arrangements should be made for another employee to attend and report and/or advise on the matter."*
29. The Commissioner notes that some of the information contains specific details about senior officer's private lives, which in many cases may never be relevant to their activities in public life. The information will only be relevant where council decisions could be affected by their personal interests, or could be seen to be affected by their personal interests. The declaration ensures that in such cases they can be excluded from making that decision or having an influence over that decision.
30. The information provides an insight into the individual's and their family's private interests. It provides details of their homes, their Membership of associations, private businesses which they or their family have links with and Membership of sporting clubs or associations which they have joined. It also provides details of where their families work if this might prove a point of conflict.
31. The Council highlights that a disclosure of this information would potentially give third parties with access to the information the ability to calculate where that person, or Members of their family would be at particular times outside of their work. For instance if an individual declares their Membership of a particular club an individual could deduce that they would be likely to attend that clubs premises at regular functions or meetings. The Commissioner considers that it is unlikely that an officer would expect such information which would provide such levels of detail of their private lives to be disclosed in response to a request under the Act.
32. The Council states that the code of conduct and protocols which it abides by are applied by local authorities throughout England. It argues that as these details are not disclosed by local authorities as a norm Officers who provided their information in this case would not have an expectation that the information would be disclosed.

33. The Commissioner also notes the specific stipulation within the document that only the monitoring officer and authorised Officers will have direct access to that information.

The seniority of the officer's involved

34. The Commissioner notes that the Officers are relatively senior within the Council. They are generally decision makers within the Council. As such they may have the ability to approve decisions which directly affect the community, or have a direct effect on the budgets of the authority. The Commissioner considers that it is likely that such Senior Officers would have some expectations that they would need to carry out their tasks transparently and be accountable for the decisions they take.

Would any damage or distress be caused by the disclosure?

35. The Council argues that given the private nature of the information in question Officers would be likely to sign a section 10 notice under the Data Protection Act if they considered that this information was likely to be disclosed. A Section 10 notice notifies the data controller that the data subject objects to it processing data in a particular way on the grounds that doing so is likely to cause the data subject damage or distress.
36. It stated that it has not asked the Officers whether they would consent to disclosure given that its view was that the information was of such a personal nature that they would not provide consent to the disclosure of this information. The Council argues that it is likely that the data subjects (i.e. the Officers) would be likely to submit the notices because: "*The register of interests contains information that is of a very personal nature to the people involved, including addresses, their affiliations and relationships that could be misused, misrepresented or used to locate and identify where they are at certain times*".
37. The Commissioner is satisfied, given the nature of certain parts of the information in question, that a disclosure would be likely to cause substantial distress to some individuals whose data would be disclosed. It would be likely to lead to fears over security given the personal addresses are provided and an officer's whereabouts could potentially be identified as explained above. He also notes that the information sometimes includes details of other family Members' business interests, or their place of work, or even their children's activities or whereabouts at certain times.
38. Given the potential for disputes or controversial decisions which they may undertake as part of their official duties, a disclosure of

information of this sort may be distressing to the Officers concerned. It is clear that providing personal details of this sort could lead to a fear that repercussions may occur in some extreme instances.

39. The Commissioner is also satisfied that disclosing certain aspects of the information would be extremely intrusive into the private lives of the Officers involved.
40. The Commissioner is therefore satisfied that a disclosure of this information may cause distress to the Officers concerned.

Would a disclosure of the information be warranted?

41. The Commissioner must consider whether there are there any other compelling factors which favour a disclosure of the information to such an extent that a disclosure would be considered fair in spite of the above.
42. He has highlighted above that the Officers concerned are relatively Senior Officers and that the decisions they take are likely to affect the community or the Council's budgets in some way. Clearly as Senior Officers who may take decisions that effect individuals lives or livelihoods there is an onus to act transparently and be accountable for the decisions which they are involved in.
43. The Commissioner notes that declarations of interest provided in this way do rely to some extent on the honesty and integrity of the Officers involved. If an officer chooses not to reveal particular interests (such as Membership of associations), then it is likely that the Council would not, on its own, discover that those interests exist. Clearly if an officer were to be aware that particular interests of his conflict with a decision he is required to take it would be likely to amount to gross misconduct not to reveal that interest. Nevertheless it would be possible that some individuals might not declare their interests for some reason.
44. A disclosure of the stated interests would form part of a check to ensure that this does occur. Public disclosure of the list might allow Members of the public to recognise links or interests which have not been identified and this could be reported to the Council's monitoring officer. A fear that this might occur would be likely to dissuade Officers from failing to declare private interests in the first instance. The lack of public transparency is a relative weakness within this system of monitoring.
45. The Commissioner also considers that transparency is in the interests of good governance, and would be likely to increase trust in decisions taken by those individuals. Clearly where individual's private interests are not known there may always be a suggestion that the decision was

in some way swayed by personal preferences or interests. It is not uncommon for rumours or allegations of misconduct to be made following particularly controversial decisions. A disclosure of personal interests of this sort would be likely to lessen this somewhat. It is for this reason that Members declarations of personal interests are provided in the first instance.

46. The Council argues that the need for transparency and scrutiny are met by the information being provided to the monitoring officer in the first instance. It is a function of the monitoring officer to ensure the probity of council decisions. The Commissioner accepts this argument to an extent, however the function of the Act is to increase transparency and trust in public authorities by allowing the general public their own ability to scrutinise the decisions taken by them. In this way the public can assure themselves that Officers have acted appropriately. Scrutiny by the monitoring officer outside of the public eye does not meet this function. An example of the ability of public scrutiny to root out and affect ineffective practices in this way was provided in recent events surrounding the expenses of Members of Parliament. In that case oversight was intended to be provided by internal processes within the House of Commons however this was apparently unsuccessful in preventing inappropriate claims being made.
47. However the Commissioner must also consider that in this instance the individuals are not elected Members, or politicians. They are primarily employees of the Council, simply carrying out their duties as required.
48. The Council has argued that as the declarations are provided voluntarily, disclosure in this way may dissuade Officers being so forthright with their declarations in the future. The Commissioner finds that is argument is not clearly linked to the fairness of disclosure or harm to privacy and therefore isn't relevant to the section 40 exemption. In any case the Commissioner is not entirely persuaded by this argument given that the onus could be made compulsory. The protocols highlighted above also state the Council Members *must* complete the form on an annual basis. However the Commissioner is concerned the level of detail it provides is such that a disclosure would be likely to be stressful to Officers whose private details are disclosed in this way. In such scenarios it is entirely likely that Officers would be less open with some of the information they include at the moment. The Council's argument is that this would in fact decrease accountability and transparency. In fact, the Commissioner considers that the opposite may in fact be true, and that a fear of being publicly identified as having undeclared conflicting interests would prevent this occurring to an extent.

49. Given the obvious public interest in at least some of this information being disclose the Commissioner has considered whether it would be possible to redact particular sections or entries to protect the more private personal interests of Officers whilst disclosing a level of information necessary to increase the current level of council transparency on this issue.
50. He recognises that such redaction would still not provide the public with a way to fully scrutinise council decision making in this way, however it would provide a greater degree of transparency than is currently the case.
51. He concludes that it was possible for the Council to have provided a partial disclosure in this instance.

Conclusions

Information to which section 40(2) applies

52. Following the above the Commissioner has considered the withheld information and considers that the Council was correct to redact some information from the Senior Officers Declaration of Interests. He believes that the following information is of a private personal nature to the extent that its disclosure would breach the provisions of the first data protection principle. He therefore considers that this information is exempt under section 40(2). His decision is that the Council was correct to redact declarations provided under the following headings
 - Address or description of land or property in which you have an interest, the nature of the interest and the use to which the land is put
 - List any organisation with which you have Membership/association, including clubs and societies
 - List any voluntary bodies of which you have Membership or association
 - Please give any further information you may wish to record about your business or financial interests.
53. He has also made a small number of individual redactions from individual declarations outlined below due to the nature of the information contained within the individual's response. The Council provided the Commissioner with the declaration in the form of an excel sheet and the following individual cells numbers relate to that sheet:

- H 31
 - F 59
 - H 59
 - D 74
 - F 75
54. The Commissioner considers that a disclosure of the information above would be an unwarranted intrusion into the private lives of the Officers concerned because of the nature of that information.
55. The Commissioner recognises that a disclosure of information under these headings would be intrusive into the private lives of the individuals concerned to such an extent that the Officers involved would be likely to feel highly uncomfortable with that level of detail on their private lives being disclosed. Senior public Officers will for the most part carry out their duties with honesty and integrity and there would hopefully be few, if any occasions where they would deliberately fail to declare their interests with a view of influencing decisions to meet their own interests. The Commissioner recognises that there will always be the odd 'bad egg' within all professions, however he is concerned that addressing such individuals in this way would lead to an unwarranted disclosure of personal, private information for the vast majority of honest public officials. This could in turn lead to very serious distress to those individuals and their families, or at the least, very intrusive information about their private lives and interests being made public.
56. As such his view is that a disclosure of this information would be unfair for the purposes of the first data protection principle. His decision is therefore that the Council was correct to apply section 40(2) to the information in this instance.

Information to which section 40(2) does not apply

57. Following on from the above the Commissioner considers that disclosure of the declarations falling within the following sections would not be unfair and should be disclosed, other than for a few individual redactions which he has highlighted above:
- Names
 - Department

- Section
 - Name and address and nature of additional business, or other employment
 - Name and address of Company, firm or other body or individual of whom consultancy is undertaken and nature of the consultancy with an indication of frequency or volume of such work.
 - Name and address and nature of business of each company or other body of which you are a Director, with an indication of whether it is in a paid or unpaid capacity.
 - Name and address and nature of business of each firm with which you are a partner
 - Name and address and nature of business of each company in which you hold shares
 - Name and address of the organisation to whom you are engaged on a retainer basis and nature of the retainer
58. The Commissioner recognises that this information provides details of each individual's interests outside that of their duties in respect of their position at the Council. However he considers that these Officers concerned are senior officer who are responsible for taking decisions which affect the community, and are responsible for budgets and the spending of public money. The interests to be disclosed have an element of public visibility and many elements may often be in the public domain already. It is therefore less reasonable for the Officers to have an expectation of non disclosure in respect of this information. In additional to the public interest already identified, the Commissioner considers there is also a strong public interest in seeing the names of the Officers so that the public can see who has submitted a declaration.
59. The disclosures offer a proportionate level of disclosure, allowing the creation of a degree of public transparency where currently none exists. The Commissioner finds that disclosure of this information would meet schedule 2 condition 6 of the DPA, he finds that:
- there is a strong legitimate public interest in disclosing the information,
 - the disclosure is necessary for a legitimate interest of the public and,

- the disclosure of this particular information would not cause unwarranted interference (or prejudice) to the rights, freedoms & legitimate interests of the data subject.
60. The Commissioner therefore finds that section 40(2) does not apply to this information.

The Decision

61. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:
- It correctly applied section 40(2) to the information highlighted in paragraphs 52 and 53 above.
62. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
- It breached section 17(1) in not providing a response to the complainant with the required 20 working days.
 - It was not correct in applying section 40(2) to the information highlighted in paragraph 57 above. In not providing this information the public authority breached section 1(1)(b) and section 10(1) of the Act.

Steps Required

63. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- To disclose the information highlighted in paragraph 57 above to the complainant.
64. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

65. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court

pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

66. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504
Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

67. 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.
68. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 7th day of June 2011

Signed

**Steve Wood
Head of Policy Delivery
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

General Right of Access

Section 1(1) provides 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."

Personal information.

Section 40(1) provides that –

"Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject."

Section 40(2) provides that –

"Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied."

Section 40(3) provides that –

"The first condition is-

- (c) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - 1. any of the data protection principles, or
 - 2. section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(d) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded."

Section 40(4) provides that –

"The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data)."

Section 40(5) provides that –

"The duty to confirm or deny-

(e) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(f) does not arise in relation to other information if or to the extent that either-

1. the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of the Act were disregarded, or

2. by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed)."

Section 40(6) provides that –

"In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded."

Section 40(7) provides that –

"In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;

"data subject" has the same meaning as in section 1(1) of that Act;

"personal data" has the same meaning as in section 1(1) of that Act."