

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 August 2012

Public Authority: North Dorset District Council

Address: Nordon
Salisbury Road
Blandford Forum
Dorset
DT11 7LL

Decision (including any steps ordered)

1. The complainant wrote to North Dorset District Council (the council) to request information about the circumstances and terms of the departure of a named individual from the council's employment. The council refused to disclose the requested information relying on section 40(2) and also section 41 as it was confidential personal information.
2. The Commissioner's decision is that the council was correct to rely on section 40(2) to withhold the requested information. He therefore does not require the council to take any steps.

Request and response

3. On 7 November 2011 the complainant made the following request for information under the FOIA:

"Has [named individual] now actually left NDDC's employment completely (ie his employment is terminated)?

Was he dismissed or did he resign?

He was on suspension for some months before he left. For how long exactly and why?

Did he get a payoff on leaving and if so for how much?"

4. The council responded on 7 November 2011 stating that the matter was a personnel issue and was therefore confidential.

5. Following an internal review the council wrote to the complainant on 8 February 2012. It stated that it was relying on section 40(2) to withhold the requested information as to disclose it would be contrary to the first data protection principle and would be unfair to the individual. It stated that having considered the public interest it had decided that the public interest did not outweigh the individual's rights. It also stated that it was relying on section 41 as disclosure of the requested information would result in a contractual breach of confidence.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled. In particular he maintained that the public interest was in favour of disclosing the requested information.
7. During the course of the Commissioner's investigation, the council said that it was willing to disclose the answer to the first question; "*Has [named individual] now actually left NDDC's employment completely (ie his employment is terminated)?*" The council confirmed that the individual had completely left the council's employment.
8. The Commissioner considers that the scope of this case is therefore to determine whether the council was correct to withhold the remaining requested information.

Reasons for decision

Section 40(2)

9. 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."

10. Section 40(3) provides that –

"The first condition is-

(a) 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-

(i) any of the data protection principles"

Is the information 'personal data'?

11. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the Data Protection Act 1998 (DPA). In this instance, the Commissioner accepts that information about the circumstances and terms of an individual's departure from an authority is personal data as defined by the DPA.

Does the disclosure of the information contravene any data protection principles?

12. In refusing to provide information relating to the departure of the named officer, including whether there was a financial settlement the council has argued that disclosure would contravene the first data protection principle.

13. The first data protection principle states that:

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met".

14. In deciding whether disclosure of personal data would be unfair the Commissioner has taken into account the following factors:

- The individual's reasonable expectation of what would happen to their personal data.
- The seniority of the individual's position at the council.
- What damage or distress would the individual suffer if the information was disclosed?
- The legitimate interests of the public in knowing the circumstances and terms of the departure of a council employee.

Reasonable Expectations

15. From the evidence provided, the Commissioner has no reason to believe that disclosure of the information requested is within the individual's reasonable expectations. The council has explained that the individual reasonably expects that the information about his departure from the council will remain confidential due to the circumstances in which it was obtained or generated by the council.
16. The Commissioner recognises that people have an instinctive expectation that a public authority, in its role as a responsible employer and data controller, will not disclose certain information. For example, he considers that information relating to the termination of an individual's employment will attract a strong general expectation of privacy.
17. The Commissioner is satisfied that the individual in this case would have had a reasonable expectation that his personal information would be kept confidential and not passed on to third parties without his consent. The council has confirmed that it has sought the individual's consent for disclosure of the information in this case but he has confirmed that he is not prepared for this information to be made public and expects that the council will treat it as confidential.

Seniority

18. The Commissioner considers that public sector employees should expect some information about their roles and the decisions they take to be disclosed under the FOIA. The Commissioner also believes that a distinction can be drawn about the levels of information which junior staff should expect to have disclosed about them compare to what information senior staff should expect to have disclosed about them. This is because the more senior a member of staff the more likely it is that they will be responsible for making influential policy or expenditure decisions.
19. The Commissioner's general approach is that public sector employees should expect some details about their salary and their role to be placed in the public domain. However, it is reasonable to assume that they would not expect details of the circumstances of their departure from a public authority. Disclosure of such information would clearly lead to a greater infringement into the privacy of individuals as it would reveal the specific details about what are clearly personal matters.
20. There has been some debate as to the seniority of the individual in this case. The council has explained that it does not consider him to hold a position of seniority as he was one of 16 relatively low-level managers.

Further to this it has stated that he did not make decisions in respect of expenditure of public funds beyond having a small budget for obtaining specialist advice.

21. However, the complainant has stated that the council's assessment of the seniority of the individual is incorrect. He maintains that the individual's position is senior as he was head of a department. The Commissioner has considered the complainant's position but his investigation has determined that the individual was not a head of department but was, as the council has explained, a relatively low-level manager.
22. The Information Tribunal in the case of *Rob Waugh v Information Commissioner and Doncaster College* (EA/2008/0038) recognised that internal disciplinary matters will be private and there will be a high expectation of privacy between employer and employee in respect of such. The Commissioner considers that the reasons for the individual's suspension from his post and later departure from the council would fall within this type of information. Therefore he considers that the individual will have a high expectation of privacy in those matters.
23. The Commissioner considers that as the individual did not hold a particularly senior position, his expectations of privacy are objectively reasonable and outweigh the arguments for disclosure based on an employee's professional life.

What damage or distress would the individual suffer if the information was disclosed?

24. Disclosing details of the circumstances and the terms of the individual's departure from the council may well affect his chances of promotion or employment elsewhere. The Commissioner has also taken into account that his emotional wellbeing may be affected by disclosure even though the distress or damage caused may be difficult to clearly evidence.
25. The Commissioner has looked at some related factors. He has noted that there is a small amount of information about the individual's departure from the council in the public domain as it is documented in local newspapers and newsletters online. The fact that some limited information about the individual's departure may have been and may still remain in the public domain could be argued to give weight to the further disclosure of information. However, such information is limited to the fact that he left the council's employment and that he had previously been suspended. It does not provide any further information which could be said to answer the requests in this case. In addition to this, the council has confirmed that whilst there may be some further information

available on the internet, it is not information that the council has disclosed or verified in any way.

26. The extent to which disclosure can be said to remain in the public domain is also likely to affect the Commissioner's decision on fairness. For example a local news story may only stay in the public's consciousness for a short period whereas with regard to information disclosed under the FOIA there must be an assumption that it could become part of a permanent and easily searchable and accessible source which may increase the unfairness of disclosure.
27. The Commissioner considers that there is a real risk that release of the information would cause damage and intrusion to the individual, particularly due to the fact that it is outside his reasonable expectations for information of this nature to be made available to the world at large.

The Legitimate Interests of the Public

28. Although the exemption contained in section 40(2) if found to be engaged is absolute and therefore not subject to the public interest test, the Commissioner will still consider legitimate interests in favour of disclosure when conducting an investigation.
29. In considering the legitimate interests of the public, the Commissioner notes there is a real public interest in knowing how much money, if any, has been spent by a public authority in relation to the departure of an employee. He also considers that there is a public interest in knowing the reasons for the departure of a council employee, particularly if it highlights criminality, illegality or serious immorality.
30. The Commissioner believes that the legitimate interests of the public in knowing how much money, if any, is spent by a public authority in the departure of an individual must be weighed against the individual's right to privacy. In the Decision in *Rob Waugh v the Information Commissioner and Doncaster College (EA/2008/0038)*, the Tribunal concluded that the legitimate interests of the public in accessing the requested information were not sufficient to outweigh the individual's right to privacy, particularly given the substantial detriment that would result from disclosure.
31. With regard to the public interest in being assured that a public sector employee has not been engaged in criminality, illegality or serious immorality, the Commissioner has seen no evidence of this in this case. If the departure of the individual was for reasons such as these, he is likely to consider that there is a relatively strong public interest in the disclosure of the requested information. However, as there does not

appear to be any evidence of such serious incidents in this case, the public interest does not outweigh the individual's right to privacy.

Conclusions

32. In the circumstances of this case the Commissioner finds that disclosure of the remaining requested information would contravene the first data protection principle. The Commissioner considers that the individual had a reasonable expectation of privacy particularly in relation to details of his departure from the council. To release the requested information would be unfair and be likely to cause him distress. The Commissioner is therefore satisfied that the public authority were correct to refuse disclosure under section 40(2).
33. As the Commissioner has concluded that the council was correct to rely on section 40(2) to withhold the requested information, he has not gone on to consider whether section 41 was also engaged.

Right of appeal

34. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

35. 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.
36. 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

Andrew White
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