

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 January 2013

Public Authority: Knowsley Metropolitan Borough Council

Address: Municipal Buildings
Archway Road
Huyton
L36 9YU

Decision (including any steps ordered)

1. The complainant has requested the names of council staff who have a company car and the make and model of their car from Knowsley Metropolitan Borough Council (the council). The council refused to provide this information relying on section 40(2) as it considered that it was personal data and it would be unfair to disclose it.
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. The complainant made a request to the council on 12 April 2012 for the following information:

"Please provide details of the number of 'company' cars the council provides to officers.

This should include the brand and value of each car (when new), and the job roles of the officers in receipt of this benefit i.e. the job roles of the officers who are entitled to drive these 'company' cars."

4. The council responded on 12 June 2012 and informed the complainant that information about remuneration, which included the provision of a leased car was available in the council's Pay Policy Statement.

5. Following some clarification of the request, a further response was provided on 4 July 2012 in which the council stated that it did not provide company cars, but that it provided an additional payment to officers of service director level and above which could be put towards leasing a car and provided the complainant with the value of the remuneration payment. The Council advised that of the 17 officers entitled to this payment, 3 took the option of leasing a car. The council stated that the names of these officers and the make and model of the car would be withheld under section 40(2) if it was found that the lease cars were company cars and therefore fell within the scope of the complainant's request.
6. The complainant requested an internal review on 3 August 2012. In light of the council's refusal notice, he specifically focused his appeal on the council's decision to withhold the names of the officers and the make and model of their cars.
7. The council provided the outcome of its internal review on 17 August 2012. It maintained its position that the council did not provide company cars. However, it also maintained its position for withholding the names of the officers and the cars they drive in the event that the scheme provided by the council could be defined as providing a company car, and thus fall within the scope of the request.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He initially complained that the council had incorrectly determined that its lease cars were not company cars. He also complained about the council's application of section 40(2) in the event that it accepted that the information was within the scope of the request.
9. During the course of the Commissioner's investigation, the council accepted that the lease cars could be defined as company cars and therefore accepted that the names of the officers and the make and model of their cars fell within the scope of the request.
10. The Commissioner wrote to the complainant to outline his understanding of his complaint. He explained that given the focus of the internal review request and response, he considered the scope of this case to be to determine whether the council was correct to rely on section 40(2) to withhold the names of the officers with lease cars, and the makes and models of those cars. The Commissioner asked the complainant to contact him if he did not agree to this interpretation, and as the

complainant has not disputed it, the Commissioner considers this to be the scope of the case.

Reasons for decision

11. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the FOIA would breach any of the data protection principles of schedule 1 of the Data Protection Act 1998 ('the DPA').

12. The Commissioner must first consider whether the requested information is personal data. Personal data is defined in section 1 of the DPA as follows:

"personal data' means data which relate to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual."

13. Having considered section 1 of the DPA, the Commissioner is satisfied that, in the context of the request, all of the information sought constitutes personal data.

14. In his original request, the complainant asked for the job roles of the officers entitled to drive company cars. The council has confirmed that only service heads and above are in receipt of the additional remuneration. The Commissioner has had regard to these job roles and it is clear that each one is unique, and that the officer can therefore be identified from them. As such, the Commissioner considers that the complainant's internal review request for the names of the officers, which was made in light of the council's initial refusal notice which referred to the names of the officers rather than their job roles, is for materially the same information for the purposes of the consideration of section 40(2) as it is clearly personal data about the officers. The Commissioner also considers that information about the cars the officers drive is personal data about them as it clearly relates to them and their personal life.

15. Having satisfied himself that the requested information is personal data, the Commissioner must establish whether disclosure of that data would breach any of the data protection principles under the DPA. The Commissioner notes that the council has argued that disclosure of the withheld information would breach the first data protection principle which 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."

16. The Commissioner considers that the primary issue is whether disclosure the information would breach the first data protection principle by being unfair.
17. In considering whether disclosure of the names of officers with company cars and the makes and models of those cars would contravene the requirements of the first principle, the Commissioner has taken into consideration the following factors:
- The reasonable expectations of the employees;
 - The consequences of disclosure; and
 - The balance between any legitimate public interest in disclosure and the rights and freedoms of the employees concerned.

Reasonable expectations

18. With regard to the first point, the council has stated that the officers have a reasonable expectation that the information will not be disclosed. However, it is not clear to the Commissioner how the officers' expectations have been shaped.
19. The Commissioner notes that the individuals in question are senior, as the council has informed the requester that the option of a company car is only provided to officers at service head level and above. The Commissioner considers that senior officers will generally have a reasonable expectation that information about their remuneration packages will be disclosed.
20. However, he notes that the council has disclosed to the complainant, the value of the remuneration payment which senior officers have the option of putting towards a company car arranged by the council. The council

has suggested that the question of which officers used the payment for a company car is therefore a matter of choice and as such, their expectations about the disclosure of this information are different to their expectations about the disclosure of the value of the remuneration.

21. The Commissioner has had regard to the council's pay policy statement¹ and notes that with regard to the matter of company cars, it states that in addition to salary, all officers graded at service director and above receive an additional remuneration of "*provision of a leased car or cash equivalent payment (under a locally determined scheme)*".
22. Finally, the council has explained that the cars are not used by officers exclusively for work purposes, and therefore the car they drive is part of their private family life.
23. On the matter of reasonable expectations therefore, the Commissioner has seen no evidence to suggest that the officers in question have been explicitly informed that their use of the remuneration payment towards a company car will be disclosed. However, the Commissioner considers that whilst the officers will have a reasonable expectation that general information about the value of their salary and additional remuneration would be disclosed in the interests of transparency, this will not extend to their choice to put the remuneration towards a company car, nor the make and model of the car.

Consequences of disclosure

24. The council has argued that disclosing the information could put the officers in question at risk. It stated that the individuals who lease cars,

"currently put their names to legal documents such as Anti-Social Behaviour Orders and disclosing the details of their names and posts along with which cars they drive could potentially make them targets for certain individuals."

25. It stated that it has a duty of care to its employees and that in disclosing this information it would be failing in that duty. It has also argued that the officers have "*a natural right to privacy and peaceful enjoyment of their property.*"

¹ <http://www.knowsley.gov.uk/pdf/KMBC-Pay-Policy-Statement.pdf>

26. As noted in paragraph 22, the council has explained that the cars are used by the officers outside their professional duties, and that it considers that they are entitled to be concerned about the ease with which they could be identified and targeted by individuals, particularly when using their cars for personal use.
27. The council has explained that it is aware that the complainant, as a journalist, intends to publish the information he obtains in an article, therefore making the make and model of car driven by the specific officers widely and easily available. The council accepts that requests made under the FOIA are purpose and motive blind, however, it has considered that its knowledge of how the information will be used has shaped its position that in disclosing it, it will be failing its employees in its duty of care. It considers that this duty of care is clear as in cases like this, the individuals concerned are involved in activities which necessarily incur some degree of personal risk.
28. The Complainant has argued that naming the individuals who have a company car and disclosing the make and model of the car would not make it any more or less likely that a potential offender could identify them. He suggested that with a limited amount of research, the place of work of the officer could be established and they could be followed from there, without the need for knowledge of the type of car they drive.
29. The Commissioner considers that the fact of having a company car would not be sufficient to enable individuals with grievances to target them. However, he accepts that knowing what make and model of car they drive could increase this risk, albeit to a limited extent as the requested information does not extend to the colour or registration number of the car.
30. In addition to this, the Commissioner has had regard to the fact that the cars are used by the officers in their private family life, and he therefore considers that the consequences of disclosure, albeit limited, extend beyond the officers themselves to their families. As such, whilst the chance of identification of the officers through their company car is slim, it does place other individuals at risk who do not have any expectation of this.
31. The Commissioner therefore considers that there are limited consequences from the disclosure of the fact of the officers having chosen to put their remuneration to towards a company car. However, he does accept that there is a limited negative consequence of disclosure of the make and model of the car relating to the increased ability of individuals to identify the officer and their family.

Balance of legitimate public interest and the rights of employees

32. The Commissioner accepts that there is a legitimate public interest in the transparency of the spending of public authorities. He recognises that it is common practice now for local government to publish remuneration information about their highest paid officers. In this case, he acknowledges that the council's disclosure of the value of the remuneration, and the fact that it can be put towards a company car, satisfies the public interest in transparency in this case to a large extent.
33. The Commissioner also accepts that the officers have a right to privacy in their personal life, and that whilst the car is a company car which is used for work matters, it is also used at home and as such forms part of their and their families' private lives.
34. The complainant has indicated that another local council in the vicinity has disclosed information about the officers who have company cars, and the make and model of these cars. He therefore considers that it is not unreasonable for this council to do the same. He also argued that withholding the requested information goes against the principles of transparency and open government as advocated by Eric Pickles, Secretary of State for Communities and Local Government.
35. The council noted that the Government's 'Code of recommended practice for local authorities on data transparency' does recommend that information about senior officers is published, but that it also provides for senior officers to withhold their names from publication. It therefore considers that in publishing the amount of remuneration and the fact that 3 officers have chosen to use it for a company car, it has complied with the code and has therefore met the requirement for transparency.
36. In weighing the balance of these competing positions, the Commissioner has had regard to the fact that it is not within the reasonable expectations of the officers for details about their company car, which is also used for personal use, to be disclosed. He has also considered the consequences of disclosure envisaged by the council. Whilst he accepts that there is a possibility that the information could be used by certain individuals to target the officers, he considers the chances of this to be slim. He finds it more likely that disclosure of the information will infringe on the officers' privacy in a more general manner.
37. However, the Commissioner finds that there is little compelling public interest solely in the fact that certain individuals have chosen to use their additional remuneration towards a company car. Particularly as this option does not incur any additional cost for the council and the council has already disclosed the amount of the remuneration. Therefore he considers that the legitimate public interest in the disclosure of the

withheld information is outweighed by the rights of the employees to privacy.

38. He therefore concludes that the council was correct to rely on section 40(2) to withhold the information.

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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

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

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

Andrew White
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