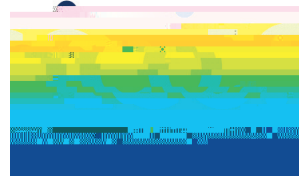


Reference: FS50410847



Freedom of Information Act 2000 (FOIA)

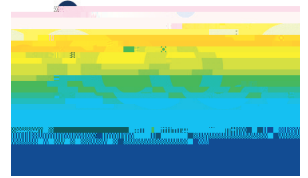
Decision notice

Date: 26 March 2012

Public Authority: Cornwall Council

Address: Treyew Road

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6. On 29 September 2011, the complainant asked for an internal review. The council's internal review on 26 October 2011 upheld its decision not to disclose the requested information under the personal information exemption.

Scope of the case

7. The complainant contacted the Commissioner on 16 August 2011 to complain about the way his request for information had been handled.
8. The Commissioner focused his investigation on the applicability of section 40(2) to the requested information.
9. On 29 November 2011, the complainant provided his arguments for disclosure to the Commissioner.
10. The council wrote to the Commissioner on 16 December 2011 setting out its arguments for withholding the requested information.

Reasons for decision

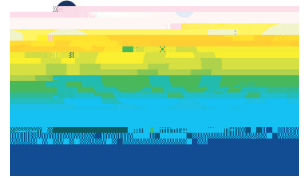
Section 40(2) – Personal information

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.
12. In his letter to the Commissioner the complainant argued the following points:

That the names of any councillors taken to court for non-payment of council tax were already in the public domain and could be ascertained by trawling through court documents. The complainant added that this was difficult for anyone with limited resources to do.

That councillors are not 'ordinary citizens' because they set council tax rates and decide how to allocate council tax. He added that councillors are committing a criminal offence if they vote on the council's budget whilst in arrears themselves.

That the public's right to know in this instance outweighed the privacy of the councillors involved.



13. However, the council argued that disclosure of the information requested would lead to unjustified and unnecessary damage and distress to the data subjects, that this would be unfair, and therefore contravene the first data protection principle.
14. In order to reach a view on the council's application of this exemption, the Commissioner firstly considered whether or not the requested information was in fact personal data.

Is the requested information personal data?

15. Personal data is defined at section 1(1) of the Data Protection Act 1998 ("the DPA") as follows:

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

(a) from those data,

(b) from those data and other information which is in the possession of, or 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."

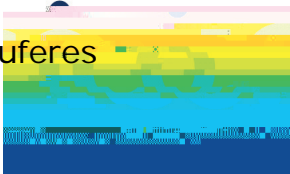
16. When considering whether the information is personal data, the Commissioner has had regard to his own published guidance, 'Determining what is personal data'.¹
17. This information concerns living individuals. An individual is 'identified' if you have distinguished that individual from other members of a group. In most cases an individual's name together with some other information will be sufficient to identify them. In this case, the 'other information' is provided by the fact that we know these individuals are councillors in a specifically designated council.
18. The council argued that release of the information would identify members of the public who also happened to be elected councillors. The Commissioner agrees with the council that the provision of names within this context would render the individuals identifiable. The

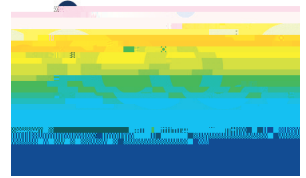
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http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/what_is_data_for_the_purposes_of_the_dpa.pdf

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Accountability – members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

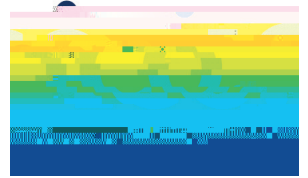
Openness – members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Duty to uphold the law – members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.²

31. The Commissioner acknowledges that the code of conduct primarily refers to public duties arising out of the position as councillor. He accepts that there is a distinction as far as council tax is concerned because it is a levy on individuals irrespective of whether they are a councillor. However, he nevertheless considers that it is reasonable for councillors to expect that recent failure to pay council tax in a private capacity is likely to impact on public perceptions and confidence in those who have put themselves forward for such a public role. Therefore in some instances, for example where there are limited or no mitigating circumstances, it would be reasonable to expect that they may be identified as having been pursued via the courts for non payment.
32. The complainant has also raised the fact that the information he has requested could be obtained from the court records and therefore it is in the public domain. The Commissioner notes that during the course of his investigation the complainant has in fact obtained the requested information via the court. The Commissioner has considered how the availability of information from the court impacts upon the expectations of the data subjects.
33. Access to court records is made via application to the court and is at the discretion of the judge who will consider whether disclosure is necessary to ensure that justice is seen to be done. The factors that a public authority must consider when deciding whether disclosure under the FOIA would breach the first data protection principle are different. Where information may have been disclosed in court or accessed from

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<http://democracy.cornwall.gov.uk/documents/s20899/Code%20of%20Conduct%20for%20Members.doc.pdf>



the court it does not necessarily follow that it would be fair for a public authority to disclose it under the FOIA.

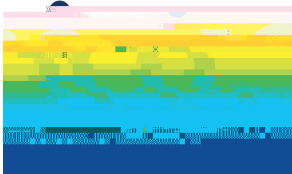
34. In the Commissioner's decision notice FS50075171, it was recognised that data is disclosed in court and could be reported. However, it concluded that later disclosure would be unfair because:

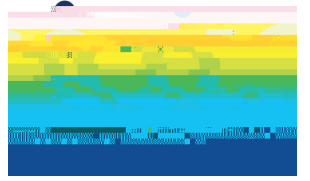
"...in practice public knowledge of the issues is only short lived and may be limited to only a small number of people. Even where cases are reported in newspapers this does not lead to the establishment of a comprehensive, searchable database of offenders."

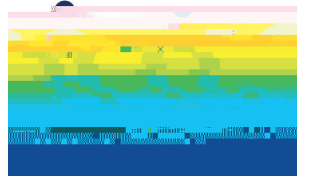
35. The Tribunal later made clear that even if the information,

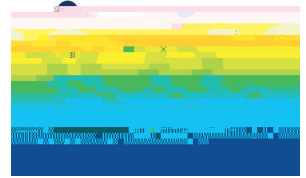
"had entered the public domain by virtue of having been referred to during the Siddiqui trial in 2001, it does not necessarily follow that it remains in the public domain"³.

Reference: FS50410847



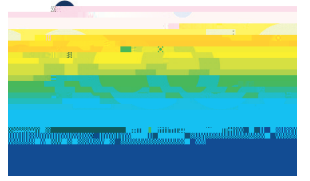


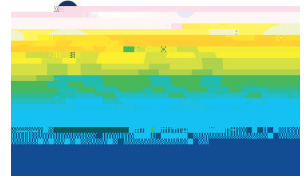




Is a schedule 3 condition satisfied?

52. In order to comply with the first data protection principle when disclosing sensitive personal data, it is also necessary to satisfy a schedule 3 condition. The Commissioner has considered the relevant provisions, conditions 5 and 10 and has concluded that neither apply in this case for the reasons set out below.
53. Condition 5 is met where the personal data in question has “been made public as a result of steps deliberately taken by the data subject”. The Commissioner has not been provided with any evidence to suggest that this condition is met in this case and therefore has concluded that it is not satisfied.
54. Condition 10 of schedule 3 provides a condition where,
- “The personal data are processed in circumstances specified in an order made by the Secretary of State for the purposes of this paragraph.”
55. Statutory Instrument 2000 no 417 “The Data Protection (Processing of Sensitive Personal Data) Order 2000” is an order made by the Secretary of State for the purposes of DPA schedule 3, condition 10. This statutory instrument sets out a number of additional circumstances in which sensitive personal data may be processed. Paragraph 3 of this statutory instrument provides for disclosure of sensitive personal data in the following circumstances:
3. – (1) The disclosure of personal data –
- is in the substantial public interest ;
- is in connection with –
- the commission by any person of any unlawful act (whether alleged or established)
- dishonesty, malpractice , or other seriously improper conduct by,
- of the unfitness or incompetence of, any person (whether alleged or established)
- mismanagement in the administration or, or failure in services provided by , any body or association (whether alleged or established)
- is for the special purposes as defined in section 3 of the Act; and
- is made with a view to the publication of those data by any person and the data controller reasonably believes that such publication would be in the public interest.
- (2) In this paragraph , “act” includes a failure to act.”





Right of appeal

61. 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

62. 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.
63. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

